The original documents are located in Box 7, folder "Intelligence - Rockefeller Commission Report - Final (1)" of the Richard B. Cheney Files at the Gerald R. Ford Presidential Library.

does criticism of C.I.A. hurt V.P. w/ conservatives?

Cy 20.7

P. response to specific allegations - to recommendations - overall characterization of the report -

June 1975

Report to the President by the COMMISSION ON CIA ACTIVITIES WITHIN THE UNITED STATES

COMMISSION ON CIA ACTIVITIES WITHIN THE UNITED STATES

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June 6, 1975

The President
The White House
Washington, D.C.

Dear Mr. President:

Your Commission to Investigate CIA Activities within the United States, having completed its assignment in accordance with Executive Order No. 11828 of January 4, 1975, herewith submits its final report.

Respectfully,

Nelson A. Rockefeller, Chairman

John T. Connor

C. Douglas Dillon

Erwin N. Griswold

Lane Kirkland

Lyman L. Lemnitzer

Ronald Reagan

Edgar F. Shannon, Jr.

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Preface

President Gerald R. Ford created the Commission on CIA Activities within the United States on January 4, 1975. He directed the Commission to determine whether any domestic CIA activities exceeded the Agency's statutory authority and to make appropriate recommendations. The findings, conclusions and recommendations of the Commission are summarized in Chapter 3 and detailed with full background in subsequent chapters.

A. Charges on CIA Domestic Activities

Charges that the CIA has conducted illegal activities within the United States violating the rights of private citizens have aroused concern:

—Because of the number and seriousness of alleged violations of law; and

—Because many of the Agency's activities are necessarily secret and therefore are not well understood by the American people.

At the same time, many persons have voiced alarm that public controversy and exposure would seriously impair the CIA's ability to function—which in turn could seriously undermine the national security. Therefore, the President took steps designed to ensure that the charges would be fully and impartially investigated and that necessary corrective actions would be taken.

B. The President's Order

The President requested a report on many of the charges from the Director of Central Intelligence and received it in late December 1974. On January 4, 1975, he issued Executive Order No. 11828 establishing a Commission on CIA Activities within the United States.[1] He assigned this Commission three tasks:

[1] The Order is reprinted in full in Appendix I.

(1) Ascertain and evaluate any facts relating to activities conducted within the United States by the Central Intelligence Agency which give rise to questions of compliance with the provisions of 50 U.S.C. 403;[2]

(2) Determine whether existing safeguards are adequate to prevent any activities which violate the provisions of 50 U.S.C. 403;

(3) Make such recommendations to the President and to the Director of Central Intelligence as the Commission deems appropriate.

President Ford appointed the members of the Commission and designated Nelson A. Rockefeller, the Vice President of the United States and former Governor of New York, who has held various posts in the Federal Government since 1940, as Chairman. The other members, all from private life, brought widely varied experience to the Commission:

John T. Connor, Chairman of the Board and Chief Executive Officer of Allied Chemical Corporation and former Secretary of Commerce (under President Johnson);

C. Douglas Dillon, a Managing Director of Dillon, Read & Co., Inc., an investment banking firm, former Secretary of the Treasury (under Presidents Kennedy and Johnson) and former Ambassador to France and Undersecretary of State (under President Eisenhower);

Erwin N. Griswold, lawyer, former Solicitor General (under Presidents Johnson and Nixon) and former Dean of the Harvard Law School;

Lane Kirkland, Secretary-Treasurer of the AFL–CIO;

Lyman L. Lemnitzer, General, U.S. Army (Retired) and former Chairman of the Joint Chiefs of Staff;

Ronald Reagan, political commentator, former President of the Screen Actors' Guild, and former Governor of California;

Edgar F. Shannon, Jr., Commonwealth Professor of English and former President of the University of Virginia.

The President named David W. Belin, a lawyer from Des Moines, Iowa, as the Commission's Executive Director. A staff of eleven lawyers was recruited, primarily from the private practice of law and with substantial investigative experience.

C. Conduct of the Investigation

The Commission has been determined from its inception to make a thorough and vigorous investigation. Because of the sensitivity of the CIA's intelligence and counterintelligence activities, and their

[2] This statute established the CIA in 1947. It is reprinted in full in Appendix III.

critical relationship to national security, the Commission recognized that it must close its sessions to the public. But as a consequence it has felt all the more an obligation to conduct a diligent investigation, assuring the American people that all serious questions of legality and propriety within the area of responsibility assigned to the Commission have been carefully investigated and analyzed.

The CIA and other agencies were directed by the President to cooperate with the Commission. Much of the evidence the Commission examined has come from CIA files and personnel. But the Commission has sought wherever possible to verify the evidence independently, using available outside sources rather than relying solely on summaries or analyses of materials supplied by the CIA or other divisions of the federal government.

The Commission began weekly hearings within eight days after its appointment and even before a full staff was available.

The Commission recognizes that no investigation of any governmental intelligence agency can be certain of uncovering every relevant fact. Nevertheless, the Commission believes that its investigation has disclosed the principal categories of CIA activities within the United States which might exceed its statutory authority or might adversely affect the rights of American citizens.

D. Alleged Plans to Assassinate Certain Foreign Leaders

Allegations that the CIA had been involved in plans to assassinate certain leaders of foreign countries came to the Commission's attention shortly after its inquiry was under way. Although it was unclear whether or not those allegations fell within the scope of the Commission's authority, the Commission directed that an inquiry be undertaken. The President concurred in this approach.

The Commission's staff began the required inquiry, but time did not permit a full investigation before this report was due. The President therefore requested that the materials in the possession of the Commission which bear on these allegations be turned over to him. This has been done.

Part I

Summary of the Investigation

Chapter 1

The Fundamental Issues

In announcing the formation of this Commission, the President noted that an effective intelligence and counterintelligence capability is essential to provide "the safeguards that protect our national interest and help avert armed conflicts."

While it is vital that security requirements be met, the President continued, it is equally important that intelligence activities be conducted without "impairing our democratic institutions and fundamental freedoms."

The Commission's assessment of the CIA's activities within the United States reflects the members' deep concern for both individual rights and national security.

A. Individual Rights

The Bill of Rights in the Constitution protects individual liberties against encroachment by government. Many statutes and the common law also reflect this protection.

The First Amendment protects the freedoms of speech and of the press, the right of the people to assemble peaceably, and the right to petition the government for redress of grievances. It has been construed to protect freedom of peaceable political association. In addition, the Fourth Amendment declares:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . .

In accordance with the objectives enunciated in these and other Constitutional amendments, the Supreme Court has outlined the following basic Constitutional doctrines:

1. Any intrusive investigation of an American citizen by the government must have a sufficient basis to warrant the invasion caused by the particular investigative practices which are utilized;

2. Government monitoring of a citizen's political activities requires even greater justification;

3. The scope of any resulting intrusion on personal privacy must not exceed the degree reasonably believed necessary;

4. With certain exceptions, the scope of which are not sharply defined, these conditions must be met, at least for significant investigative intrusions, to the satisfaction of an uninvolved governmental body such as a court.

These Constitutional standards give content to an accepted principle of our society—the right of each person to a high degree of individual privacy.

In recognition of this right, President Truman and the Congress—in enacting the law creating the CIA in 1947—included a clause providing that the CIA should have no police, subpoena, law-enforcement powers or internal security functions.

Since then, Congress has further outlined citizen rights in statutes limiting electronic surveillance and granting individuals access to certain information in government files,[1] underscoring the general concern of Congress and the Executive Branch in this area.

B. Government Must Obey the Law

The individual liberties of American citizens depend on government observance of the law.

Under our form of Constitutional government, authority can be exercised only if it has been properly delegated to a particular department or agency by the Constitution or Congress.

Most delegations come from Congress; some are implied from the allocation of responsibility to the President. Wherever the basic authority resides, however, it is fundamental in our scheme of Constitutional government that agencies—including the CIA—shall exercise only those powers properly assigned to them by Congress or the President.

Whenever the activities of a government agency exceed its authority, individual liberty may be impaired.

C. National Security

Individual liberties likewise depend on maintaining public order at home and in protecting the country against infiltration from abroad

[1] Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. Secs. 2510–20) and Privacy Act of 1974 (5 U.S.C. Sec. 552a).

and armed attack. Ensuring domestic tranquility and providing for a common defense are not only Constitutional goals but necessary preconditions for a free, democratic system. The process of orderly and lawful change is the essence of democracy. Violent change, or forcing a change of government by the stealthy action of "enemies, foreign or domestic," is contrary to our Constitutional system.

The government has both the right and the obligation within Constitutional limits to use its available power to protect the people and their established form of government. Nevertheless, the mere invocation of the "national security" does not grant unlimited power to the government. The degree of the danger and the type of action contemplated to meet that danger require careful evaluation, to ensure that the danger is sufficient to justify the action and that fundamental rights are respected.

D. Resolving the Issues

Individual freedoms and privacy are fundamental in our society. Constitutional government must be maintained. An effective and efficient intelligence system is necessary; and to be effective, many of its activities must be conducted in secrecy.

Satisfying these objectives presents considerable opportunity for conflict. The vigorous pursuit of intelligence by certain methods can lead to invasions of individual rights. The preservation of the United States requires an effective intelligence capability, but the preservation of individual liberties within the United States requires limitations or restrictions on gathering of intelligence. The drawing of reasonable lines—where legitimate intelligence needs end and erosion of Constitutional government begins—is difficult.

In seeking to draw such lines, we have been guided in the first instance by the commands of the Constitution as they have been interpreted by the Supreme Court, the laws as written by Congress, the values we believe are reflected in the democratic process, and the faith we have in a free society. We have also sought to be fully cognizant of the needs of national security, the requirements of a strong national defense against external aggression and internal subversion, and the duty of the government to protect its citizens.

In the final analysis, public safety and individual liberty sustain each other.

Chapter 2

The Need for Intelligence

During the period of the Commission's inquiry, there have been public allegations that a democracy does not need an intelligence apparatus. The Commission does not share this view. Intelligence is information gathered for policymakers in government which illuminates the range of choices available to them and enables them to exercise judgment. Good intelligence will not necessarily lead to wise policy choices. But without sound intelligence, national policy decisions and actions cannot effectively respond to actual conditions and reflect the best national interest or adequately protect our national security.

Intelligence gathering involves collecting information about other countries' military capabilities, subversive activities, economic conditions, political developments, scientific and technological progress, and social activities and conditions. The raw information must be evaluated to determine its reliability and relevance, and must then be analyzed. The final products—called "finished intelligence"—are distributed to the President and the political, military and other governmental leaders according to their needs.

Intelligence gathering has changed rapidly and radically since the advent of the CIA in 1947.[1] The increased complexity of international political, economic, and military arrangements, the increased destructiveness of the weapons of modern warfare, and the advent of electronic methods of surveillance have altered and enlarged the needs for sophisticated intelligence. Intelligence agencies have had to rely more and more on scientific and technological developments to help meet these needs.

Despite the increasing complexity and significance of intelligence in national policymaking, it is also important to understand its limits. Not all information is reliable, even when the most highly refined

[1] The CIA is only one of several foreign intelligence agencies in the federal government. Others include the National Security Agency, the Defense Intelligence Agency, the intelligence branches of the three military services and the State Department's Bureau of Intelligence and Research.

intelligence methods are used to collect it. Nor can any intelligence system ensure that its current estimates of another country's intentions or future capacities are accurate or will not be outrun by unforeseen events. There are limits to accurate forecasting, and the use of deception by our adversaries or the penetration of our intelligence services increases the possibility that intelligence predictions may prove to be wrong. Nevertheless, informed decision-making is impossible without an intelligence system adequately protected from penetration.

Therefore, a vital part of any intelligence service is an effective counterintelligence program, directed toward protecting our own intelligence system and ascertaining the activities of foreign intelligence services, such as espionage, sabotage, and subversion, and toward minimizing or counteracting the effectiveness of these activities.

Foreign Invasions of United States Privacy

This Commission is devoted to analyzing the domestic activities of the CIA in the interest of protecting the privacy and security rights of American citizens. But we cannot ignore the invasion of the privacy and security rights of Americans by foreign countries or their agents. This is the other side of the coin—and it merits attention here in the interest of perspective.

Witnesses with responsibilities for counterintelligence have told the Commission that the United States remains the principal intelligence target of the communist bloc.

The communists invest large sums of money, personnel and sophisticated technology in collecting information—within the United States—on our military capabilities, our weapons systems, our defense structure and our social divisions. The communists seek to penetrate our intelligence services, to compromise our law enforcement agencies and to recruit as their agents United States citizens holding sensitive government and industry jobs. In addition, it is a common practice in communist bloc countries to inspect and open mail coming from or going to the United States.

In an open society such as ours, the intelligence opportunities for our adversaries are immeasurably greater than they are for us in their closed societies. Our society must remain an open one, with our traditional freedoms unimpaired. But when the intelligence activities of other countries are flourishing in the free environment we afford them, it is all the more essential that the foreign intelligence activities of the CIA and our other intelligence agencies, as well as the domestic counterintelligence activities of the FBI, be given the support neces-

sary to protect our national security and to shield the privacy and rights of American citizens from foreign intrusion.

The Commission has received estimates that communist bloc intelligence forces currently number well over 500,000 worldwide.

The number of communist government officials in the United States has tripled since 1960, and is still increasing. Nearly 2,000 of them are now in this country—and a significant percentage of them have been identified as members of intelligence or security agencies. Conservative estimates for the number of unidentified intelligence officers among the remaining officials raise the level to over 40 percent.

In addition to sending increasing numbers of their citizens to this country openly, many of whom have been trained in espionage, communist bloc countries also place considerable emphasis on the training, provision of false identification and dispatching of "illegal" agents—that is, operatives for whom an alias identity has been systematically developed which enables them to live in the United States as American citizens or resident aliens without our knowledge of their true origins.

While making large-scale use of human intelligence sources, the communist countries also appear to have developed electronic collection of intelligence to an extraordinary degree of technology and sophistication for use in the United States and elsewhere throughout the world, and we believe that these countries can monitor and record thousands of private telephone conversations. Americans have a right to be uneasy if not seriously disturbed at the real possibility that their personal and business activities which they discuss freely over the telephone could be recorded and analyzed by agents of foreign powers.

This raises the real specter that selected American users of telephones are potentially subject to blackmail that can seriously affect their actions, or even lead in some cases to recruitment as espionage agents.

Chapter 3

Summary of Findings, Conclusions, and Recommendations

As directed by the President, the Commission has investigated the role and authority of the CIA, the adequacy of the internal controls and external supervision of the Agency, and its significant domestic activities that raise questions of compliance with the limits on its statutory authority. This chapter summarizes the findings and conclusions of the Commission and sets forth its recommendations.

A. Summary of Charges and Findings

The initial public charges were that the CIA's domestic activities had involved:

1. Large-scale spying on American citizens in the United States by the CIA, whose responsibility is foreign intelligence.
2. Keeping dossiers on large numbers of American citizens.
3. Aiming these activities at Americans who have expressed their disagreement with various government policies.

These initial charges were subsequently supplemented by others including allegations that the CIA:

—Had intercepted and opened personal mail in the United States for 20 years;

—Had infiltrated domestic dissident groups and otherwise intervened in domestic politics;

—Had engaged in illegal wiretaps and break-ins; and,

—Had improperly assisted other government agencies.

In addition, assertions have been made ostensibly linking the CIA to the assassination of President John F. Kennedy.

It became clear from the public reaction to these charges that the secrecy in which the Agency nesessarily operates, combined with the allegations of wrongdoing, had contributed to widespread public misunderstanding of the Agency's actual practices.

A detailed analysis of the facts has convinced the Commission that the great majority of the CIA's domestic activities comply with its statutory authority.

Nevertheless, over the 28 years of its history, the CIA has engaged in some activities that should be criticized and not permitted to happen again—both in light of the limits imposed on the Agency by law and as a matter of public policy.

Some of these activities were initiated or ordered by Presidents, either directly or indirectly.

Some of them fall within the doubtful area between responsibilities delegated to the CIA by Congress and the National Security Council on the one hand and activities specifically prohibited to the Agency on the other.

Some of them were plainly unlawful and constituted improper invasions upon the rights of Americans.

The Agency's own recent actions, undertaken for the most part in 1973 and 1974, have gone far to terminate the activities upon which this investigation has focused. The recommendations of the Commission are designed to clarify areas of doubt concerning the Agency's authority, to strengthen the Agency's structure, and to guard against recurrences of these improprieties.

B. The CIA's Role and Authority (Chapters 4–6)

Findings

The Central Intelligence Agency was established by the National Security Act of 1947 as the nation's first comprehensive peacetime foreign intelligence service. The objective was to provide the President with coordinated intelligence, which the country lacked prior to the attack on Pearl Harbor.

The Director of Central Intelligence reports directly to the President. The CIA receives its policy direction and guidance from the National Security Council, composed of the President, the Vice President, and the Secretaries of State and Defense.

The statute directs the CIA to correlate, evaluate, and disseminate intelligence obtained from United States intelligence agencies, and to perform such other functions related to intelligence as the National Security Council directs. Recognizing that the CIA would be dealing with sensitive, secret materials, Congress made the Director of Central Intelligence responsible for protecting intelligence sources and methods from unauthorized disclosure.

At the same time, Congress sought to assure the American public

that it was not establishing a secret police which would threaten the civil liberties of Americans. It specifically forbade the CIA from exercising "police, subpoena, or law-enforcement powers or internal security functions." The CIA was not to replace the Federal Bureau of Investigation in conducting domestic activities to investigate crime or internal subversion.

Although Congress contemplated that the focus of the CIA would be on foreign intelligence, it understood that some of its activities would be conducted within the United States. The CIA necessarily maintains its headquarters here, procures logistical support, recruits and trains employees, tests equipment, and conducts other domestic activities in support of its foreign intelligence mission. It makes necessary investigations in the United States to maintain the security of its facilities and personnel.

Additionally, it has been understood from the beginning that the CIA is permitted to collect foreign intelligence—that is, information concerning foreign capabilities, intentions, and activities—from American citizens within this country by overt means.

Determining the legal propriety of domestic activities of the CIA requires the application of the law to the particular facts involved. This task involves consideration of more than the National Security Act and the directives of the National Security Council; Constitutional and other statutory provisions also circumscribe the domestic activities of the CIA. Among the applicable Constitutional provisions are the First Amendment, protecting freedom of speech, of the press, and of peaceable assembly; and the Fourth Amendment, prohibiting unreasonable searches and seizures. Among the statutory provisions are those which limit such activities as electronic eavesdropping and interception of the mails.

The precise scope of many of these statutory and Constitutional provisions is not easily stated. The National Security Act in particular was drafted in broad terms in order to provide flexibility for the CIA to adapt to changing intelligence needs. Such critical phrases as "internal security functions" are left undefined. The meaning of the Director's responsibility to protect intelligence sources and methods from unauthorized disclosure has also been a subject of uncertainty.

The word "foreign" appears nowhere in the statutory grant of authority, though it has always been understood that the CIA's mission is limited to matters related to foreign intelligence. This apparent statutory ambiguity, although not posing problems in practice, has troubled members of the public who read the statute without having the benefit of the legislative history and the instructions to the CIA from the National Security Council.

Conclusions

The evidence within the scope of this inquiry does not indicate that fundamental rewriting of the National Security Act is either necessary or appropriate.

The evidence does demonstrate the need for some statutory and administrative clarification of the role and function of the Agency.

Ambiguities have been partially responsible for some, though not all, of the Agency's deviations within the United States from its assigned mission. In some cases, reasonable persons will differ as to the lawfulness of the activity; in others, the absence of clear guidelines as to its authority deprived the Agency of a means of resisting pressures to engage in activities which now appear to us improper.

Greater public awareness of the limits of the CIA's domestic authority would do much to reassure the American people.

The requisite clarification can best be accomplished (*a*) through a specific amendment clarifying the National Security Act provision which delineates the permissible scope of CIA activities, as set forth in Recommendation 1, and (*b*) through issuance of an Executive Order further limiting domestic activities of the CIA, as set forth in Recommendation 2.

Recommendation (1)

Section 403 of the National Security Act of 1947 should be amended in the form set forth in Appendix VI to this Report. These amendments, in summary, would:

***a.* Make explicit that the CIA's activities must be related to *foreign* intelligence.**

***b.* Clarify the responsibility of the CIA to protect intelligence sources and methods from unauthorized disclosure. (The Agency would be responsible for protecting against unauthorized disclosures within the CIA, and it would be responsible for providing guidance and technical assistance to other agency and department heads in protecting against unauthorized disclosures within their own agencies and departments.)**

***c.* Confirm publicly the CIA's existing authority to collect foreign intelligence from willing sources within the United States, and, except as specified by the President in a published Executive Order,[1] prohibit the CIA from collection ef-**

[1] The Executive Order authorized by this statute should recognize that when the collection of foreign intelligence from persons who are not United States citizens results in the incidental acquisition of information from unknowing citizens, the Agency should be permitted to make appropriate use or disposition of such information. Such collection activities must be directed at foreign intelligence sources, and the involvement of American citizens must be incidental.

forts within the United States directed at securing foreign intelligence from unknowing American citizens.

Recommendation (2)

The President should by Executive Order prohibit the CIA from the collection of information about the domestic activities of United States citizens (whether by overt or covert means), the evaluation, correlation, and dissemination of analyses or reports about such activities, and the storage of such information, with exceptions for the following categories of persons or activities:

a. Persons presently or formerly affiliated, or being considered for affiliation, with the CIA, directly or indirectly, or others who require clearance by the CIA to receive classified information;

b. Persons or activities that pose a clear threat to CIA facilities or personnel, provided that proper coordination with the FBI is accomplished;

c. Persons suspected of espionage or other illegal activities relating to foreign intelligence, provided that proper coordination with the FBI is accomplished.

d. Information which is received incidental to appropriate CIA activities may be transmitted to an agency with appropriate jurisdiction, including law enforcement agencies.

Collection of information from normal library sources such as newspapers, books, magazines and other such documents is not to be affected by this order.

Information currently being maintained which is inconsistent with the order should be destroyed at the conclusion of the current congressional investigations or as soon thereafter as permitted by law.

The CIA should periodically screen its files and eliminate all material inconsistent with the order.

The order should be issued after consultation with the National Security Council, the Attorney General, and the Director of Central Intelligence. Any modification of the order would be permitted only through published amendments.

C. Supervision and Control of the CIA

1. External Controls (Chapter 7)

Findings

The CIA is subject to supervision and control by various executive agencies and by the Congress.

Congress has established special procedures for review of the CIA and its secret budget within four small subcommittees.[2] Historically, these subcommittees have been composed of members of Congress with many other demands on their time. The CIA has not as a general rule received detailed scrutiny by the Congress.

The principal bodies within the Executive Branch performing a supervisory or control function are the National Security Council, which gives the CIA its policy direction and control; the Office of Management and Budget, which reviews the CIA's budget in much the same fashion as it reviews budgets of other government agencies; and the President's Foreign Intelligence Advisory Board, which is composed of distinguished citizens, serving part time in a general advisory function for the President on the quality of the gathering and interpretation of intelligence.

None of these agencies has the specific responsibility of overseeing the CIA to determine whether its activities are proper.

The Department of Justice also exercises an oversight role, through its power to initiate prosecutions for criminal misconduct. For a period of over 20 years, however, an agreement existed between the Department of Justice and the CIA providing that the Agency was to investigate allegations of crimes by CIA employees or agents which involved Government money or property or might involve operational security. If, following the investigation, the Agency determined that there was no reasonable basis to believe a crime had been committed, or that operational security aspects precluded prosecution, the case was not referred to the Department of Justice.

The Commission has found nothing to indicate that the CIA abused the function given it by the agreement. The agreement, however, involved the Agency directly in forbidden law enforcement activities, and represented an abdication by the Department of Justice of its statutory responsibilities.

Conclusions

Some improvement in the congressional oversight system would be helpful. The problem of providing adequate oversight and control while maintaining essential security is not easily resolved. Several knowledgeable witnesses pointed to the Joint Committee on Atomic Energy as an appropriate model for congressional oversight of the Agency. That Committee has had an excellent record of providing effective oversight while avoiding breaches of security in a highly sensitive area.

[2] Subcommittees of the Appropriations Committees and the Armed Services Committees of the two houses.

One of the underlying causes of the problems confronting the CIA arises out of the pervading atmosphere of secrecy in which its activities have been conducted in the past. One aspect of this has been the secrecy of the budget.

A new body is needed to provide oversight of the Agency within the Executive Branch. Because of the need to preserve security, the CIA is not subject to the usual constraints of audit, judicial review, publicity or open congressional budget review and oversight. Consequently, its operations require additional external control. The authority assigned the job of supervising the CIA must be given sufficient power and significance to assure the public of effective supervision.

The situation whereby the Agency determined whether its own employees would be prosecuted must not be permitted to recur.

Recommendation (3)

The President should recommend to Congress the establishment of a Joint Committee on Intelligence to assume the oversight role currently played by the Armed Services Committees.[3]

Recommendation (4)

Congress should give careful consideration to the question whether the budget of the CIA should not, at least to some extent, be made public, particularly in view of the provisions of Article I, Section 9, Clause 7 of the Constitution.[4]

Recommendation (5)

a. The functions of the President's Foreign Intelligence Advisory Board should be expanded to include oversight of the CIA. This expanded oversight board should be composed of distinguished citizens with varying backgrounds and experience. It should be headed by a full-time chairman and should have a full-time staff appropriate to its role. Its functions related to the CIA should include:

1. Assessing compliance by the CIA with its statutory authority.

2. Assessing the quality of foreign intelligence collection.

3. Assessing the quality of foreign intelligence estimates.

4. Assessing the quality of the organization of the CIA.

5. Assessing the quality of the management of the CIA.

6. Making recommendations with respect to the above subjects to the President and the Director of Central Intelligence, and, where appropriate, the Attorney General.

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[3] See statement by Commissioner Griswold, Chapter 7.

[4] "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time."

b. The Board should have access to all information in the CIA. It should be authorized to audit and investigate CIA expenditures and activities on its own initiative.

c. The Inspector General of the CIA should be authorized to report directly to the Board, after having notified the Director of Central Intelligence, in cases he deems appropriate.

Recommendation (6)

The Department of Justice and the CIA should establish written guidelines for the handling of reports of criminal violations by employees of the Agency or relating to its affairs. These guidelines should require that the criminal investigation and the decision whether to prosecute be made by the Department of Justice, after consideration of Agency views regarding the impact of prosecution on the national security. The Agency should be permitted to conduct such investigations as it requires to determine whether its operations have been jeopardized. The Ageny should scrupulously avoid exercise of the prosecutorial function.

2. Internal Controls (Chapter 8)

Findings

The Director's duties in administering the intelligence community, handling relations with other components of the government, and passing on broad questions of policy leave him little time for day-to-day supervision of the Agency. Past studies have noted the need for the Director to delegate greater responsibility for the administration of the Agency to the Deputy Director of Central Intelligence.

In recent years, the position of Deputy Director has been occupied by a high-ranking military officer, with responsibilities for maintaining liaison with the Department of Defense, fostering the Agency's relationship with the military services, and providing top CIA management with necessary experience and skill in understanding particular intelligence requirements of the military. Generally speaking, the Deputy Directors of Central Intelligence have not been heavily engaged in administration of the Agency.

Each of the four directorates within the CIA—Operations, Intelligence, Administration, and Science and Technology—is headed by a deputy director who reports to the Director and Deputy Director of Central Intelligence. These four deputies, together with certain other top Agency officials such as the Comptroller, form the Agency Management Committee, which makes many of the administrative and management decisions affecting more than one directorate.

Outside the chain of command, the primary internal mechanism for keeping the Agency within bounds is the Inspector General. The size of this office was recently sharply reduced, and its previous practice of making regular reviews of various Agency departments was terminated. At the present time, the activities of the office are almost entirely concerned with coordinating Agency responses to the various investigating bodies, and with various types of employee grievances.

The Office of General Counsel has on occasion played an important role in preventing or terminating Agency activities in violation of law, but many of the questionable or unlawful activities discussed in this report were not brought to the attention of this office. A certain parochialism may have resulted from the fact that attorneys in the office have little or no legal experience outside the Agency. It is important that the Agency receive the best possible legal advice on the often difficult and unusual situations which confront it.

Conclusions

In the final analysis, the proper functioning of the Agency must depend in large part on the character of the Director of Central Intelligence.

The best assurance against misuse of the Agency lies in the appointment to that position of persons with the judgment, courage, and independence to resist improper pressure and importuning, whether from the White House, within the Agency or elsewhere.

Compartmentation within the Agency, although certainly appropriate for security reasons, has sometimes been carried to extremes which prevent proper supervision and control.

The Agency must rely on the discipline and integrity of the men and women it employs. Many of the activities we have found to be improper or unlawful were in fact questioned by lower-level employees. Bringing such situations to the attention of upper levels of management is one of the purposes of a system of internal controls.

Recommendation (7)

a. Persons appointed to the position of Director of Central Intelligence should be individuals of stature, independence, and integrity. In making this appointment, consideration should be given to individuals from outside the career service of the CIA, although promotion from within should not be barred. Experience in intelligence service is not necessarily a prerequisite for the position; management and administrative skills are at least as important as the technical expertise which can always be found in an able deputy.

b. Although the Director serves at the pleasure of the President, no Director should serve in that position for more than 10 years.

Recommendation (8)

a. The Office of Deputy Director of Central Intelligence should be reconstituted to provide for two such deputies, in addition to the four heads of the Agency's directorates. One deputy would act as the administrative officer, freeing the Director from day-to-day management duties. The other deputy should be a military officer, serving the functions of fostering relations with the military and providing the Agency with technical expertise on military intelligence requirements.

b. The advice and consent of the Senate should be required for the appointment of each Deputy Director of Central Intelligence.

Recommendation (9)

a. The Inspector General should be upgraded to a status equivalent to that of the deputy directors in charge of the four directorates within the CIA.

b. The Office of Inspector General should be staffed by outstanding, experienced officers from both inside and outside the CIA, with ability to understand the various branches of the Agency.

c. The Inspector General's duties with respect to domestic CIA activities should include periodic reviews of all offices within the United States. He should examine each office for compliance with CIA authority and regulations as well as for the effectiveness of their programs in implementing policy objectives.

d. The Inspector General should investigate all reports from employees concerning possible violations of the CIA statute.

e. The Inspector General should be given complete access to all information in the CIA relevant to his reviews.

f. An effective Inspector General's office will require a larger staff, more frequent reviews, and highly qualified personnel.

g. Inspector General reports should be provided to the National Security Council and the recommended executive oversight body. The Inspector General should have the authority, when he deems it appropriate, after notifying the Director of Central Intelligence, to consult with the executive oversight body on any CIA activity (see Recommendation 5).

Recommendation (10)

a. The Director should review the composition and operation of the Office of General Counsel and the degree to which this office is consulted to determine whether the Agency is receiving adequate legal assistance and representation in view of current requirements.

b. Consideration should be given to measures which would strengthen the office's professional capabilities and resources including, among other things, (1) occasionally departing from the

existing practice of hiring lawyers from within the Agency to bring in seasoned lawyers from private practice as well as to hire law school graduates without prior CIA experience; (2) occasionally assigning Agency lawyers to serve a tour of duty elsewhere in the government to expand their experience; (3) encouraging lawyers to participate in outside professional activities.

Recommendation (11)

To a degree consistent with the need for security, the CIA should be encouraged to provide for increased lateral movement of personnel among the directorates and to bring persons with outside experience into the Agency at all levels.

Recommendation (12)

a. The Agency should issue detailed guidelines for its employees further specifying those activities within the United States which are permitted and those which are prohibited by statute, Executive Orders, and NSC and DCI directives.

b. These guidelines should also set forth the standards which govern CIA activities and the general types of activities which are permitted and prohibited. They should, among other things, specify that:

—Clandestine collection of intelligence directed against United States citizens is prohibited except as specifically permitted by law or published Executive Order.

—Unlawful methods or activities are prohibited.

—Prior approval of the DCI shall be required for any activities which may raise questions of compliance with the law or with Agency regulations.

c. The guidelines should also provide that employees with information on possibly improper activities are to bring it promptly to the attention of the Director of Central Intelligence or the Inspector General.

D. Significant Areas of Investigation

Introduction

Domestic activities of the CIA raising substantial questions of compliance with the law have been closely examined by the Commission to determine the context in which they were performed, the pressures of the times, the relationship of the activity to the Agency's foreign intelligence assignment and to other CIA activities, the procedures

used to authorize and conduct the activity, and the extent and effect of the activity.

In describing and assessing each such activity, it has been necessary to consider both that activity's relationship to the legitimate national security needs of the nation and the threat such activities might pose to individual rights of Americans and to a society founded on the need for government, as well as private citizens, to obey the law.

1. The CIA's Mail Intercepts (Chapter 9)

Findings

At the time the CIA came into being, one of the highest national intelligence priorities was to gain an understanding of the Soviet Union and its worldwide activities affecting our national security.

In this context, the CIA began in 1952 a program of surveying mail between the United States and the Soviet Union as it passed through a New York postal facility. In 1953 it began opening some of this mail. The program was expanded over the following two decades and ultimately involved the opening of many letters and the analysis of envelopes, or "covers," of a great many more letters.

The New York mail intercept was designed to attempt to identify persons within the United States who were cooperating with the Soviet Union and its intelligence forces to harm the United States. It was also intended to determine technical communications procedures and mail censorship techniques used by the Soviets.

The Director of the Central Intelligence Agency approved commencement of the New York mail intercept in 1952. During the ensuing years, so far as the record shows, Postmasters General Summerfield, Day, and Blount were informed of the program in varying degrees, as was Attorney General Mitchell. Since 1958, the FBI was aware of this program and received 57,000 items from it.

A 1962 CIA memorandum indicates the Agency was aware that the mail openings would be viewed as violating federal criminal laws prohibiting obstruction or delay of the mails.

In the last year before the termination of this program, out of 4,350,000 items of mail sent to and from the Soviet Union, the New York intercept examined the outside of 2,300,000 of these items, photographed 33,000 envelopes, and opened 8,700.

The mail intercept was terminated in 1973 when the Chief Postal Inspector refused to allow its continuation without an up-to-date high-level approval.

The CIA also ran much smaller mail intercepts for brief periods in San Francisco between 1969 and 1971 and in the territory of Hawaii

during 1954 and 1955. For a short period in 1957, mail in transit between foreign countries was intercepted in New Orleans.

Conclusions

While in operation, the CIA's domestic mail opening programs were unlawful. United States statutes specifically forbid opening the mail.

The mail openings also raise Constitutional questions under the Fourth Amendment guarantees against unreasonable search, and the scope of the New York project poses possible difficulties with the First Amendment rights of speech and press.

Mail cover operations (examining and copying of envelopes only) are legal when carried out in compliance with postal regulations on a limited and selective basis involving matters of national security. The New York mail intercept did not meet these criteria.

The nature and degree of assistance given by the CIA to the FBI in the New York mail project indicate that the CIA's primary purpose eventually became participation with the FBI in internal security functions. Accordingly, the CIA's participation was prohibited under the National Security Act.

Recommendation (13)

a. The President should instruct the Director of Central Intelligence that the CIA is not to engage again in domestic *mail openings* except with express statutory authority in time of war. (See also Recommendation 23.)

b. The President should instruct the Director of Central Intelligence that *mail cover* examinations are to be in compliance with postal regulations; they are to be undertaken only in furtherance of the CIA's legitimate activities and then only on a limited and selected basis clearly involving matters of national security.

2. Intelligence Community Coordination (Chapter 10)

Findings

As a result of growing domestic disorder, the Department of Justice, starting in 1967 at the direction of Attorney General Ramsey Clark, coordinated a series of secret units and interagency groups in an effort to collate and evaluate intelligence relating to these events. These efforts continued until 1973.

The interagency committees were designed for analytic and not

operational purposes. They were created as a result of White House pressure which began in 1967, because the FBI performed only limited evaluation and analysis of the information it collected on these events. The stated purpose of CIA's participation was to supply relevant foreign intelligence and to furnish advice on evaluation techniques.

The CIA was reluctant to become unduly involved in these committees, which had problems of domestic unrest as their principal focus. It repeatedly refused to assign full-time personnel to any of them.

The most active of the committees was the Intelligence Evaluation Staff, which met from January 1971 to May 1973. A CIA liaison officer [4] attended over 100 weekly meetings of the Staff, some of which concerned drafts of reports which had no foreign aspects. With the exception of one instance, there is no evidence that he acted in any capacity other than as an adviser on foreign intelligence, and, to some degree, as an editor.

On one occasion the CIA liaison officer appears to have caused a CIA agent to gather domestic information which was reported to the Intelligence Evaluation Staff.

The Commission found no evidence of other activities by the CIA that were conducted on behalf of the Department of Justice groups except for the supplying of appropriate foreign intelligence and advice on evaluation techniques.

Conclusions

The statutory prohibition on internal security functions does not preclude the CIA from providing foreign intelligence or advice on evaluation techniques to interdepartmental intelligence evaluation organizations having some domestic aspects. The statute was intended to promote coordination, not compartmentation of intelligence between governmental departments.

The attendance of the CIA liaison officer at over 100 meetings of the Intelligence Evaluation Staff, some of them concerned wholly with domestic matters, nevertheless created at least the appearance of impropriety. The Director of Central Intelligence was well advised to approach such participation reluctantly.

The liaison officer acted improperly in the one instance in which he directed an agent to gather domestic information within the United States which was reported to the Intelligence Evaluation Staff.

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[4] The liaison officer was Chief of the CIA's Special Operations Group which ran Operation CHAOS, discussed in Chapter 11 of this Report.

Much of the problem stemmed from the absence in government of any organization capable of adequately analyzing intelligence collected by the FBI on matters outside the purview of CIA.

Recommendation (14)

a. A capability should be developed within the FBI, or elsewhere in the Department of Justice, to evaluate, analyze, and coordinate intelligence and counterintelligence collected by the FBI concerning espionage, terrorism, and other related matters of internal security.

b. The CIA should restrict its participation in any joint intelligence committees to foreign intelligence matters.

c. The FBI should be encouraged to continue to look to the CIA for such foreign intelligence and counter-intelligence as is relevant to FBI needs.

3. Special Operations Group—"Operation CHAOS" (Chapter 11)

Findings

The late 1960's and early 1970's were marked by widespread violence and civil disorders.[5] Demonstrations, marches and protest assemblies were frequent in a number of cities. Many universities and college campuses became places of disruption and unrest. Government facilities were picketed and sometimes invaded. Threats of bombing and bombing incidents occurred frequently. In Washington and other major cities, special security measures had to be instituted to control the access to public buildings.

Responding to Presidential requests made in the face of growing domestic disorder, the Director of Central Intelligence in August 1967 established a Special Operations Group within the CIA to collect, coordinate, evaluate and report on the extent of foreign influence on domestic dissidence.

The Group's activities, which later came to be known as Operation CHAOS, led the CIA to collect information on dissident Americans from CIA field stations overseas and from the FBI.

Although the stated purpose of the Operation was to determine whether there were any foreign contacts with American dissident groups, it resulted in the accumulation of considerable material on domestic dissidents and their activities.

During six years, the Operation compiled some 13,000 different files, including files on 7,200 American citizens. The documents in these files and related materials included the names of more than 300,000 persons and organizations, which were entered into a computerized index.

[5] See Appendix V.

This information was kept closely guarded within the CIA. Using this information, personnel of the Group prepared 3,500 memoranda for internal use; 3,000 memoranda for dissemination to the FBI; and 37 memoranda for distribution to White House and other top level officials in the government.

The staff assigned to the Operation was steadily enlarged in response to repeated Presidential requests for additional information, ultimately reaching a maximum of 52 in 1971. Because of excessive isolation, the Operation was substantially insulated from meaningful review within the Agency, including review by the Counterintelligence Staff—of which the Operation was technically a part.

Commencing in late 1969, Operation CHAOS used a number of agents to collect intelligence abroad on any foreign connections with American dissident groups. In order to have sufficient "cover" for these agents, the Operation recruited persons from domestic dissident groups or recruited others and instructed them to associate with such groups in this country.

Most of the Operation's recruits were not directed to collect information domestically on American dissidents. On a number of occasions, however, such information was reported by the recruits while they were developing dissident credentials in the United States, and the information was retained in the files of the Operation. On three occasions, an agent of the Operation was specifically directed to collect domestic intelligence.

No evidence was found that any Operation CHAOS agent used or was directed by the Agency to use electronic surveillance, wiretaps or break-ins in the United States against any dissident individual or group.

Activity of the Operation decreased substantially by mid-1972. The Operation was formally terminated in March 1974.

Conclusions

Some domestic activities of Operation CHAOS unlawfully exceeded the CIA's statutory authority, even though the declared mission of gathering intelligence abroad as to foreign influence on domestic dissident activities was proper.

Most significantly, the Operation became a repository for large quantities of information on the domestic activities of American citizens. This information was derived principally from FBI reports or from overt sources and not from clandestine collection by the CIA, and much of it was not directly related to the question of the existence of foreign connections.

It was probably necessary for the CIA to accumulate an information base on domestic dissident activities in order to assess fairly whether the activities had foreign connections. The FBI would collect information but would not evaluate it. But the accumulation of domestic data in the Operation exceeded what was reasonably required to make such an assessment and was thus improper.

The use of agents of the Operation on three occasions to gather information within the United States on strictly domestic matters was beyond the CIA's authority. In addition the intelligence disseminations and those portions of a major study prepared by the Agency which dealt with purely domestic matters were improper.

The isolation of Operation CHAOS within the CIA and its independence from supervision by the regular chain of command within the clandestine service made it possible for the activities of the Operation to stray over the bounds of the Agency's authority without the knowledge of senior officials. The absence of any regular review of these activities prevented timely correction of such missteps as did occur.

Recommendation (15)

a. Presidents should refrain from directing the CIA to perform what are essentially internal security tasks.

b. The CIA should resist any efforts, whatever their origin, to involve it again in such improper activities.

c. The Agency should guard against allowing any component (like the Special Operations Group) to become so self-contained and isolated from top leadership that regular supervision and review are lost.

d. The files of the CHAOS project which have no foreign intelligence value should be destroyed by the Agency at the conclusion of the current congressional investigations, or as soon thereafter as permitted by law.

4. Protection of the Agency Against Threats of Violence—Office of Security (Chapter 12)

Findings

The CIA was not immune from the threats of violence and disruption during the period of domestic unrest between 1967 and 1972. The Office of Security was charged throughout this period with the responsibility of ensuring the continued functioning of the CIA.

The Office therefore, from 1967 to 1970, had its field officers collect information from published materials, law enforcement authorities,

other agencies and college officials before recruiters were sent to some campuses. Monitoring and communications support was provided to recruiters when trouble was expected.

The Office was also responsible, with the approval of the Director of Central Intelligence, for a program from February 1967 to December 1968, which at first monitored, but later infiltrated, dissident organizations in the Washington, D.C., area to determine if the groups planned any activities against CIA or other government installations.

At no time were more than 12 persons performing these tasks, and they performed them on a part-time basis. The project was terminated when the Washington Metropolitan Police Department developed its own intelligence capability.

In December, 1967, the Office began a continuing study of dissident activity in the United States, using information from published and other voluntary knowledgeable sources. The Office produced weekly Situation Information Reports analyzing dissident activities and providing calendars of future events. Calendars were given to the Secret Service, but the CIA made no other disseminations outside the Agency. About 500 to 800 files were maintained on dissenting organizations and individuals. Thousands of names in the files were indexed. Report publication was ended in late 1972, and the entire project was ended in 1973.

Conclusions

The program under which the Office of Security rendered assistance to Agency recruiters on college campuses was justified as an exercise of the Agency's responsibility to protect its own personnel and operations. Such support activities were not undertaken for the purpose of protecting the facilities or operations of other governmental agencies, or to maintain public order or enforce laws.

The Agency should not infiltrate a dissident group for security purposes unless there is a clear danger to Agency installations, operations or personnel, and investigative coverage of the threat by the FBI and local law enforcement authorities is inadequate. The Agency's infiltration of dissident groups in the Washington area went far beyond steps necessary to protect the Agency's own facilities, personnel and operations, and therefore exceeded the CIA's statutory authority.

In addition, the Agency undertook to protect other government departments and agencies—a police function prohibited to it by statute.

Intelligence activity directed toward learning from what sources a domestic dissident group receives its financial support within the

United States, and how much income it has, is no part of the authorized security operations of the Agency. Neither is it the function of the Agency to compile records on who attends peaceful meetings of such dissident groups, or what each speaker has to say (unless it relates to disruptive or violent activity which may be directed against the Agency).

The Agency's actions in contributing funds, photographing people, activities and cars, and following people home were unreasonable under the circumstances and therefore exceeded the CIA's authority.

With certain exceptions, the program under which the Office of Security (without infiltration) gathered, organized and analyzed information about dissident groups for purposes of security was within the CIA's authority.

The accumulation of reference files on dissident organizations and their leaders was appropriate both to evaluate the risks posed to the Agency and to develop an understanding of dissident groups and their differences for security clearance purposes. But the accumulation of information on domestic activities went beyond what was required by the Agency's legitimate security needs and therefore exceeded the CIA's authority.

Recommendation (16)

The CIA should not infiltrate dissident groups or other organizations of Americans in the absence of a written determination by the Director of Central Intelligence that such action is necessary to meet a clear danger to Agency facilities, operations, or personnel and that adequate coverage by law enforcement agencies is unavailable.

Recommendation (17)

All files on individuals accumulated by the Office of Security in the program relating to dissidents should be identified, and, except where necessary for a legitimate foreign intelligence activity, be destroyed at the conclusion of the current congressional investigations, or as soon thereafter as permitted by law.

5. Other Investigations by the Office of Security (Chapter 13)

A. Security Clearance Investigations of Prospective Employees and Operatives

Findings and Conclusions

The Office of Security routinely conducts standard security investigations of persons seeking affiliation with the Agency. In doing so, the

Office is performing the necessary function of screening persons to whom it will make available classified information. Such investigations are necessary, and no improprieties were found in connection with them.

B. Investigations of Possible Breaches of Security

1. Persons Investigated

Findings

The Office of Security has been called upon on a number of occasions to investigate specific allegations that intelligence sources and methods were threatened by unauthorized disclosures. The Commission's inquiry concentrated on those investigations which used investigative means intruding on the privacy of the subjects, including physical and electronic surveillance, unauthorized entry, mail covers and intercepts, and reviews of individual federal tax returns.

The large majority of these investigations were directed at persons affiliated with the Agency—such as employees, former employees, and defectors and other foreign nationals used by the Agency as intelligence sources.

A few investigations involving intrusions on personal privacy were directed at subjects with no relationship to the Agency. The Commission has found no evidence that any such investigations were directed against any congressman, judge, or other public official. Five were directed against newsmen, in an effort to determine their sources of leaked classified information, and nine were directed against other United States citizens.

The CIA's investigations of newsmen to determine their sources of classified information stemmed from pressures from the White House and were partly a result of the FBI's unwillingness to undertake such investigations. The FBI refused to proceed without an advance opinion that the Justice Department would prosecute if a case were developed.

Conclusions

Investigations of allegations against Agency employees and operatives are a reasonable exercise of the Director's statutory duty to protect intelligence sources and methods from unauthorized disclosure if the investigations are lawfully conducted. Such investigations also assist the Director in the exercise of his unreviewable authority to terminate the employment of any Agency employee. They are proper unless

their principal purpose becomes law-enforcement or the maintenance of internal security.

The Director's responsibility to protect intelligence sources and methods is not so broad as to permit investigations of persons having no relationship whatever with the Agency. The CIA has no authority to investigate newsmen simply because they have published leaked classified information. Investigations by the CIA should be limited to persons presently or formerly affiliated with the Agency, directly or indirectly.

Recommendation (18)

a. The Director of Central Intelligence should issue clear guidelines setting forth the situations in which the CIA is justified in conducting its own investigation of individuals presently or formerly affiliated with it.

b. The guidelines should permit the CIA to conduct investigations of such persons only when the Director of Central Intelligence first determines that the investigation is necessary to protect intelligence sources and methods the disclosure of which might endanger the national security.

c. Such investigations must be coordinated with the FBI whenever substantial evidence suggesting espionage or violation of a federal criminal statute is discovered.

Recommendation (19)

a. In cases involving serious or continuing security violations, as determined by the Security Committee of the United States Intelligence Board, the Committee should be authorized to recommend in writing to the Director of Central Intelligence (with a copy to the National Security Council) that the case be referred to the FBI for further investigation, under procedures to be developed by the Attorney General.

b. These procedures should include a requirement that the FBI accept such referrals without regard to whether a favorable prosecutive opinion is issued by the Justice Department. The CIA should not engage in such further investigations.

Recommendation (20)

The CIA and other components and agencies of the intelligence community should conduct periodic reviews of all classified material originating within those departments or agencies, with a view to declassifying as much of that material as possible. The purpose of such review would be to assure the public that it has access to all information that should properly be disclosed.

Recommendation (21)

The Commission endorses legislation, drafted with appropriate

safeguards of the constitutional rights of all affected individuals, which would make it a criminal offense for employees or former employees of the CIA wilfully to divulge to any unauthorized person classified information pertaining to foreign intelligence or the collection thereof obtained during the course of their employment.

2. Investigative Techniques

Findings

Even an investigation within the CIA's authority must be conducted by lawful means. Some of the past investigations by the Office of Security within the United States were conducted by means which were invalid at the time. Others might have been lawful when conducted, but would be impermissible today.

Some investigations involved physical surveillance of the individuals concerned, possibly in conjunction with other methods of investigation. The last instance of physical surveillance by the Agency within the United States occurred in 1973.

The investigation disclosed the domestic use of 32 wiretaps, the last in 1965; 32 instances of bugging, the last in 1968; and 12 break-ins, the last in 1971. None of these activities was conducted under a judicial warrant, and only one with the written approval of the Attorney General.

Information from the income tax records of 16 persons was obtained from the Internal Revenue Service by the CIA in order to help determine whether the taxpayer was a security risk with possible connections to foreign groups. The CIA did not employ the existing statutory and regulatory procedures for obtaining such records from the IRS.

In 91 instances, mail covers (the photographing of the front and back of an envelope) were employed, and in 12 instances letters were intercepted and opened.

The state of the CIA records on these activities is such that it is often difficult to determine why the investigation occurred in the first place, who authorized the special coverage, and what the results were. Although there was testimony that these activities were frequently known to the Director of Central Intelligence and sometimes to the Attorney General, the files often are insufficient to confirm such information.

Conclusions

The use of physical surveillance is not unlawful unless it reaches the point of harassment. The unauthorized entries described were

illegal when conducted and would be illegal if conducted today. Likewise, the review of individuals' federal tax returns and the interception and opening of mail violated specific statutes and regulations prohibiting such conduct.

Since the constitutional and statutory constraints applicable to the use of electronic eavesdropping (bugs and wiretaps) have been evolving over the years, the Commission deems it impractical to apply those changing standards on a case-by-case basis. The Commission does believe that while some of the instances of electronic eavesdropping were proper when conducted, many were not. To be lawful today, such activities would require at least the written approval of the Attorney General on the basis of a finding that the national security is involved and that the case has significant foreign connections.

Recommendation (22)

The CIA should not undertake physical surveillance (defined as systematic observation) of Agency employees, contractors or related personnel within the United States without first obtaining written approval of the Director of Central Intelligence.

Recommendation (23)

In the United States and its possessions, the CIA should not intercept wire or oral communications [6] or otherwise engage in activities that would require a warrant if conducted by a law enforcement agency. Responsibility for such activities belongs with the FBI.

Recommendation (24)

The CIA should strictly adhere to established legal procedures governing access to federal income tax information.

Recommendation (25)

CIA investigation records should show that each investigation was duly authorized, and by whom, and should clearly set forth the factual basis for undertaking the investigation and the results of the investigation.

C. Handling of Defectors

Findings

The Office of Security is charged with providing security for persons who have defected to the United States. Generally a defector

[6] As defined in the Omnibus Crime Control and Safe Streets Act, 18 U.S.C. Secs. 2510–20.

can be processed and placed into society in a few months, but one defector was involuntarily confined at a CIA installation for three years. He was held in solitary confinement under spartan living conditions. The CIA maintained the long confinement because of doubts about the bona fides of the defector. This confinement was approved by the Director of Central Intelligence; and the FBI, Attorney General, United States Intelligence Board and selected members of Congress were aware to some extent of the confinement. In one other case a defector was physically abused; the Director of Central Intelligence discharged the employee involved.

Conclusions

Such treatment of individuals by an agency of the United States is unlawful. The Director of Central Intelligence and the Inspector General must be alert to prevent repetitions.

6. Involvement of the CIA in Improper Activities for the White House (Chapter 14)

Findings

During 1971, at the request of various members of the White House staff, the CIA provided alias documents and disguise material, a tape recorder, camera, film and film processing to E. Howard Hunt. It also prepared a psychological profile of Dr. Daniel Ellsberg.

Some of this equipment was later used without the knowledge of the CIA in connection with various improper activities, including the entry into the office of Dr. Lewis Fielding, Ellsberg's psychiatrist.

Some members of the CIA's medical staff who participated in the preparation of the Ellsberg profile knew that one of its purposes was to support a public attack on Ellsberg. Except for this fact, the investigation has disclosed no evidence that the CIA knew or had reason to know that the assistance it gave would be used for improper purposes.

President Nixon and his staff also insisted in this period that the CIA turn over to the President highly classified files relating to the Lebanon landings, the Bay of Pigs, the Cuban missile crisis, and the Vietnam War. The request was made on the ground that these files were needed by the President in the performance of his duties, but the record shows the purpose, undisclosed to the CIA, was to serve the President's personal political ends.

The Commission has also investigated the response of the CIA

to the investigations following the Watergate arrests. Beginning in June 1972, the CIA received various requests for information and assistance in connection with these investigations. In a number of instances, its responses were either incomplete or delayed and some materials that may or may not have contained relevant information were destroyed. The Commission feels that this conduct reflects poor judgment on the part of the CIA, but it has found no evidence that the CIA participated in the Watergate break-in or in the post-Watergate cover-up by the White House.

Conclusions

Providing the assistance requested by the White House, including the alias and disguise materials, the camera and the psychological profile on Ellsberg, was not related to the performance by the Agency of its authorized intelligence functions and was therefore improper.

No evidence has been disclosed, however, except as noted in connection with the Ellsberg profile, that the CIA knew or had reason to know that its assistance would be used in connection with improper activities. Nor has any evidence been disclosed indicating that the CIA participated in the planning or carrying out of either the Fielding or Watergate break-ins. The CIA apparently was unaware of the break-ins until they were reported in the media.

The record does show, however, that individuals in the Agency failed to comply with the normal control procedures in providing assistance to E. Howard Hunt. It also shows that the Agency's failure to cooperate fully with ongoing investigations following Watergate was inconsistent with its obligations.

Finally, the Commission concludes that the requests for assistance by the White House reflect a pattern for actual and attempted misuse of the CIA by the Nixon administration.

Recommendation (26)

a. A single and exclusive high-level channel should be established for transmission of all White House staff requests to the CIA. This channel should run between an officer of the National Security Council staff designated by the President and the office of the Director or his Deputy.

b. All Agency officers and employees should be instructed that any direction or request reaching them directly and out of regularly established channels should be immediately reported to the Director of Central Intelligence.

7. Domestic Activities of the Directorate of Operations (Chapter 15)

Findings and Conclusions

In support of its responsibility for the collection of foreign intelligence and conduct of covert operations overseas, the CIA's Directorate of Operations engages in a variety of activities within the United States.

A. Overt Collection of Foreign Intelligence within the United States

One division of the Directorate of Operations collects foreign intelligence within the United States from residents, business firms, and other organizations willing to assist the Agency. This activity is conducted openly by officers who identify themselves as CIA employees. Such sources of information are not compensated.

In connection with these collection activities, the CIA maintains approximately 50,000 active files which include details of the CIA's relationships with these voluntary sources and the results of a federal agency name check.

The division's collection efforts have been almost exclusively confined to foreign economic, political, military, and operational topics.

Commencing in 1969, however, some activities of the division resulted in the collection of limited information with respect to American dissidents and dissident groups. Although the focus was on foreign contacts of these groups, background information on domestic dissidents was also collected. Between 1969 and 1974, when this activity was formally terminated, 400 reports were made to Operation CHAOS.

In 1972 and 1973, the division obtained and transmitted, to other parts of the CIA, information about telephone calls between the Western Hemisphere (including the United States) and two other countries. The information was limited to names, telephone numbers, and locations of callers and recipients. It did not include the content of the conversations.

This division also occasionally receives reports concerning criminal activity within the United States. Pursuant to written regulations, the source or a report of the information received is referred to the appropriate law enforcement agency.

The CIA's efforts to collect foreign intelligence from residents of the United States willing to assist the CIA are a valid and necessary element of its responsibility. Not only do these persons provide

a large reservoir of foreign intelligence; they are by far the most accessible source of such information.

The division's files on American citizens and firms representing actual or potential sources of information constitute a necessary part of its legitimate intelligence activities. They do not appear to be vehicles for the collection or communication of derogatory, embarrassing, or sensitive information about American citizens.

The division's efforts, with few exceptions, have been confined to legitimate topics.

The collection of information with respect to American dissident groups exceeded legitimate foreign intelligence collection and was beyond the proper scope of CIA activity. This impropriety was recognized in some of the division's own memoranda.

The Commission was unable to discover any specific purpose for the collection of telephone toll call information or any use of that information by the Agency. In the absence of a valid purpose, such collection is improper.

B. Provision and Control of Cover for CIA Personnel

CIA personnel engaged in clandestine foreign intelligence activities cannot travel, live or perform their duties openly as Agency employees. Accordingly, virtually all CIA personnel serving abroad and many in the United States assume a "cover" as employees of another government agency or of a commercial enterprise. CIA involvement in certain activities, such as research and development projects, are also sometimes conducted under cover.

CIA's cover arrangements are essential to the CIA's performance of its foreign intelligence mission. The investigation has disclosed no instances in which domestic aspects of the CIA's cover arrangements involved any violations of law.

By definition, however, cover necessitates an element of deception which must be practiced within the United States as well as within foreign countries. This creates a risk of conflict with various regulatory statutes and other legal requirements. The Agency recognizes this risk. It has installed controls under which cover arrangements are closely supervised to attempt to ensure compliance with applicable laws.

C. Operating Proprietary Companies

The CIA uses proprietary companies to provide cover and perform administrative tasks without attribution to the Agency. Most of the large operating proprietaries—primarily airlines—have been liqui-

dated, and the remainder engage in activities offering little or no competition to private enterprise.

The only remaining large proprietary activity is a complex of financial companies, with assets of approximately $20 million, that enable the Agency to administer certain sensitive trusts, annuities, escrows, insurance arrangements, and other benefits and payments provided to officers or contract employees without attribution to CIA. The remaining small operating proprietaries, generally having fewer than ten employees each, make nonattributable purchases of equipment and supplies.

Except as discussed in connection with the Office of Security (see Chapters 12 and 13), the Commission has found no evidence that any proprietaries have been used for operations against American citizens or investigation of their activities. All of them appear to be subject to close supervision and multiple financial controls within the Agency.

D. Development of Contacts With Foreign Nationals

In connection with the CIA's foreign intelligence responsibilities, it seeks to develop contacts with foreign nationals within the United States. American citizens voluntarily assist in developing these contacts. As far as the Commission can find, these activities have not involved coercive methods.

These activities appear to be directed entirely to the production of foreign intelligence and to be within the authority of the CIA. We found no evidence that any of these activities have been directed against American citizens.

E. Assistance in Narcotics Control

The Directorate of Operations provides foreign intelligence support to the government's efforts to control the flow of narcotics and other dangerous drugs into this country. The CIA coordinates clandestine intelligence collection overseas and provides other government agencies with foreign intelligence on drug traffic.

From the beginning of such efforts in 1969, the CIA Director and other officials have instructed employees to make no attempt to gather information on Americans allegedly trafficking in drugs. If such information is obtained incidentally, it is transmitted to law enforcement agencies.

Concerns that the CIA's narcotics-related intelligence activities may involve the Agency in law enforcement or other actions directed against American citizens thus appear unwarranted.

Beginning in the fall of 1973, the Directorate monitored conversations between the United States and Latin America in an effort to identify narcotics traffickers. Three months after the program began, the General Counsel of the CIA was consulted. He issued an opinion that the program was illegal, and it was immediately terminated.

This monitoring, although a source of valuable information for enforcement officials, was a violation of a statute of the United States. Continuation of the operation for over three months without the knowledge of the Office of the General Counsel demonstrates the need for improved internal consultation. (See Recommendation 10.)

8. Domestic Activities of the Directorate of Science and Technology (Chapter 16)

Findings and Conclusions

The CIA's Directorate of Science and Technology performs a variety of research and development and operational support functions for the Agency's foreign intelligence mission.

Many of these activities are performed in the United States and involve cooperation with private companies. A few of these activities were improper or questionable.

As part of a program to test the influence of drugs on humans, research included the administration of LSD to persons who were unaware that they were being tested. This was clearly illegal. One person died in 1953, apparently as a result. In 1963, following the Inspector General's discovery of these events, new stringent criteria were issued prohibiting drug testing by the CIA on unknowing persons. All drug testing programs were ended in 1967.

In the process of testing monitoring equipment for use overseas, the CIA has overheard conversations between Americans. The names of the speakers were not identified; the contents of the conversations were not disseminated. All recordings were destroyed when testing was concluded. Such testing should not be directed against unsuspecting persons in the United States. Most of the testing undertaken by the Agency could easily have been performed using only Agency personnel and with the full knowledge of those whose conversations were being recorded. This is the present Agency practice.

Other activities of this Directorate include the manufacture of alias credentials for use by CIA employees and agents. Alias credentials are necessary to facilitate CIA clandestine operations, but the strictest controls and accountability must be maintained over the use of such

documents. Recent guidelines established by the Deputy Director for Operations to control the use of alias documentation appear adequate to prevent abuse in the future.

As part of another program, photographs taken by CIA aerial photography equipment are provided to civilian agencies of the government. Such photographs are used to assess natural disasters, conduct route surveys and forest inventories, and detect crop blight. Permitting civilian use of aerial photography systems is proper. The economy of operating but one aerial photography program dictates the use of these photographs for appropriate civilian purposes.

Recommendation (27)

In accordance with its present guidelines, the CIA should not again engage in the testing of drugs on unsuspecting persons.

Recommendation (28)

Testing of equipment for monitoring conversations should not involve unsuspecting persons living within the United States.

Recommendation (29)

A civilian agency committee should be reestablished to oversee the civilian uses of aerial intelligence photography in order to avoid any concerns over the improper domestic use of a CIA-developed system.

9. CIA Relationships With Other Federal, State, and Local Agencies (Chapter 17)

CIA operations touch the interest of many other agencies. The CIA, like other agencies of the government, frequently has occasion to give or receive assistance from other agencies. This investigation has concentrated on those relationships which raise substantial questions under the CIA's legislative mandate.

Findings and Conclusions

A. Federal Bureau of Investigation

The FBI counterintelligence operations often have positive intelligence ramifications. Likewise, legitimate domestic CIA activities occasionally cross the path of FBI investigations. Daily liaison is therefore necessary between the two agencies.

Much routine information is passed back and forth. Occasionally joint operations are conducted. The relationship between the agencies

has, however, not been uniformly satisfactory over the years. Formal liaison was cut off from February 1970 to November 1972, but relationships have improved in recent years.

The relationship between the CIA and the FBI needs to be clarified and outlined in detail in order to ensure that the needs of national security are met without creating conflicts or gaps of jurisdiction.

Recommendation (30)

The Director of Central Intelligence and the Director of the FBI should prepare and submit for approval by the National Security Council a detailed agreement setting forth the jurisdiction of each agency and providing for effective liaison with respect to all matters of mutual concern. This agreement should be consistent with the provisions of law and with other applicable recommendations of this Report.

Findings and Conclusions

B. Narcotics Law Enforcement Agencies

Beginning in late 1970, the CIA assisted the Bureau of Narcotics and Dangerous Drugs (BNDD) to uncover possible corruption within that organization. The CIA used one of its proprietary companies to recruit agents for BNDD and gave them short instructional courses. Over two and one-half years, the CIA recruited 19 agents for the BNDD. The project was terminated in 1973.

The Director was correct in his written directive terminating the project. The CIA's participation in law enforcement activities in the course of these activties was forbidden by its statute. The Director and the Inspector General should be alert to prevent involvement of the Agency in similar enterprises in the future.

C. The Department of State

For more than 20 years, the CIA through a proprietary conducted a training school for foreign police and security officers in the United States under the auspices of the Agency for International Development of the Department of State. The proprietary also sold small amounts of licensed firearms and police equipment to the foreign officers and their departments.

The CIA's activities in providing educational programs for foreign police were not improper under the Agency's statute. Although the school was conducted within the United States through a CIA proprietary, it had no other significant domestic impact.

Engaging in the firearms business was a questionable activity for a government intelligence agency. It should not be repeated.

D. Funding Requests From Other Federal Agencies

In the spring of 1970, at the request of the White House, the CIA contributed $33,655.68 for payment of stationery and other costs for replies to persons who wrote the President after the invasion of Cambodia.

This use of CIA funds for a purpose unrelated to intelligence is improper. Steps should be taken to ensure against any repetition of such an incident.

E. State and Local Police

The CIA handles a variety of routine security matters through liaison with local police departments. In addition, it offered training courses from 1966 to 1973 to United States police officers on a variety of law enforcement techniques, and has frequently supplied equipment to state and local police.

In general, the coordination and cooperation between state and local law enforcement agencies and the CIA has been exemplary, based upon a desire to facilitate their respective legitimate aims and goals.

Most of the assistance rendered to state and local law enforcement agencies by the CIA has been no more than an effort to share with law enforcement authorities the benefits of new methods, techniques, and equipment developed or used by the Agency.

On a few occasions, however, the Agency has improperly become involved in actual police operations. Thus, despite a general rule against providing manpower to local police forces, the CIA has lent men, along with radio-equipped vehicles, to the Washington Metropolitan Police Department to help monitor anti-war demonstrations. It helped the same Department surveil a police informer. It also provided an interpreter to the Fairfax County (Virginia) Police Department to aid in a criminal investigation.

In compliance with the spirit of a recent Act of Congress, the CIA terminated all but routine assistance to state and local law enforcement agencies in 1973. Such assistance is now being provided state and local agencies by the FBI. There is no impropriety in the CIA's furnishing the FBI with information on new technical developments which may be useful to local law enforcement.

For several years the CIA has given gratuities to local police offi-

cers who had been helpful to the Agency. Any such practice should be terminated.

The CIA has also received assistance from local police forces. Aside from routine matters, officers from such forces have occasionally assisted the Office of Security in the conduct of investigations. The CIA has occasionally obtained police badges and other identification for use as cover for its agents.

Except for one occasion when some local police assisted the CIA in an unathorized entry, the assistance received by the CIA from state and local law enforcement authorities was proper. The use of police identification as a means of providing cover, while not strictly speaking a violation of the Agency's statutory authority as long as no police function is performed, is a practice subject to misunderstanding and should be avoided.

10. Indices and Files on American Citizens (Chapter 18)

Findings

Biographical information is a major resource of an intelligence agency. The CIA maintains a number of files and indices that include biographical information on Americans.

As a part of its normal process of indexing names and information of foreign intelligence interest, the Directorate of Operations has indexed some 7,000,000 names of all nationalities. An estimated 115,000 of these are believed to be American citizens.

Where a person is believed to be of possibly continuing intelligence interest, files to collect information as received are opened. An estimated 57,000 out of a total of 750,000 such files concern American citizens. For the most part, the names of Americans appear in indices and files as actual or potential sources of information or assistance to the CIA. In addition to these files, files on some 7,200 American citizens, relating primarily to their domestic activities, were, as already stated, compiled within the Directorate of Operations as part of Operation CHAOS.

The Directorate of Administration maintains a number of files on persons who have been associated with the CIA. These files are maintained for security, personnel, training, medical and payroll purposes. Very few are maintained on persons unaware that they have a relationship with the CIA. However, the Office of Security maintained files on American citizens associated with dissident groups who were never affiliated with the Agency because they were considered a threat to the physical security of Agency facilities and employees. These

files were also maintained, in part, for use in future security clearance determinations. Dissemination of security files is restricted to persons with an operational need for them.

The Office of Legislative Counsel maintains files concerning its relationships with congressmen.

Conclusions

Although maintenance of most of the indices, files, and records of the Agency has been necessary and proper, the standards applied by the Agency at some points during its history have permitted the accumulation and indexing of materials not needed for legitimate intelligence or security purposes. Included in this category are many of the files related to Operation CHAOS and the activities of the Office of Security concerning dissident groups.

Constant vigilance by the Agency is essential to prevent the collection of information on United States citizens which is not needed for proper intelligence activities. The Executive Order recommended by the Commission (Recommendation 2) will ensure purging of nonessential or improper materials from Agency files.

11. Allegations Concerning the Assassination of President Kennedy (Chapter 19)

Numerous allegations have been made that the CIA participated in the assassination of President John F. Kennedy. The Commission staff investigated these allegations. On the basis of the staff's investigation, the Commission concludes that there is no credible evidence of CIA involvement.

Part II

The CIA's Role and Authority

Introduction

The legal authority of the Central Intelligence Agency derives primarily from the National Security Act of 1947 and the implementing directives of the National Security Council.

The Act, written in broad terms, is properly understood only against the historical background. Chapter 4 discusses this background.

Chapter 5 sets forth the statutory language and describes the legislative history, the subsequent National Security Council directives, and the administrative practice.

Chapter 6 analyzes the scope of the CIA's legal authority for its activities within the United States.

Chapter 4

Intelligence and Related Activities by the United States before 1947

The United States, like other countries, has long collected intelligence. Until World War II, however, its activities were minimal. General Dwight D. Eisenhower described the prewar United States intelligence system as "a shocking deficiency that impeded all constructive planning." [1] It was not until the Office of Strategic Services (OSS) was established during the second World War that the organized collection of intelligence began on a substantial scale, although the FBI was active in Latin America in the late 1930's and during the war.

Even before Pearl Harbor, President Franklin D. Roosevelt was acutely aware of deficiencies in American intelligence. When calling on William J. Donovan, a New York lawyer who later headed OSS, to draft a plan for an intelligence service, he bluntly observed: "We have no intelligence service." [2] Donovan's study recommended that a central unit be established to coordinate intelligence activities and to process information for the President. As a result, OSS was created to operate in certain major theaters.

The function of OSS was to collect and analyze strategic information required by the Joint Chiefs of Staff and to conduct special operations not assigned to other agencies. Other intelligence services of the State Department and the military services were maintained to collect tactical intelligence directly related to their specific missions.

OSS relied primarily on three operating staffs: (1) the Secret Intelligence division, assigned to overseas collection, generally involving espionage; (2) the X-2 division, the counterespionage unit which protected the security of espionage agents; (3) the Research and Analysis division, which produced intelligence reports for policy makers. The OSS also performed other functions, varying from propaganda to paramilitary operations.

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[1] D. D. Eisenhower, *Crusade in Europe*, p. 32 (1948).
[2] H. H. Ransom, *The Intelligence Establishment*, p. 61 (1970).

By the end of the war, approximately 13,000 employees were engaged in the intelligence and special operations activities of the OSS. It supplied policymakers with essential facts and intelligence estimates. It also played an important role in directly aiding military campaigns. Nevertheless, OSS never received complete jurisdiction over all foreign intelligence activities. In the Southwest Pacific Theater, its activities were limited. Moreover, although the jurisdictional boundaries between the FBI and the military services were never made entirely clear, the FBI had been assigned responsibility for intelligence activities in Latin America. Friction inevitably developed among the FBI, the military and OSS during the war.

On October 1, 1945, following the end of the war, President Truman ordered that OSS be dissolved as an independent body. Several of the branches of OSS continued and were absorbed by other agencies. Research and intelligence evaluation was assigned to the State Department, and espionage and related special operations were transferred to the War Department.

Even before OSS was dismembered, however, proposals had been drawn up for a postwar centralized intelligence system. These early plans, and the discussions concerning them, led ultimately to the creation of the CIA. The participants in these early discussions all believed strongly that a postwar intelligence capability was necessary. They differed only in their views concerning the proper structure and role for a centralized agency.

The original plan General Donovan submitted to President Roosevelt in November 1944 called for separation of intelligence services from the Joint Chiefs of Staff. Direct Presidential supervision was recommended.

To avoid duplication and ensure effective coordination, Donovan proposed an "organization which will procure intelligence both by overt and covert methods and will at the same time provide intelligence guidance, determine national intelligence objectives, and correlate the intelligence material collected by all Government agencies."

Under this plan, a powerful centralized agency would have dominated the intelligence services of several departments. Donovan's memorandum also proposed that this agency have authority to conduct "subversive operations abroad" but "no police or law enforcement functions, either at home or abroad."

Several centralized approaches were offered in response as soon as Donovan's plan was distributed for comment. The Navy took the lead in opposing a complete merger of intelligence services. It asserted that the Donovan proposal was not feasible since each operating department had individual needs which required "operating intelligence peculiar to itself." It proposed a Central Intelligence Agency in name

only whose function would be to coordinate intelligence information, "as far as practicable, [to] unify all foreign intelligence activities, and to synthesize all intelligence developments abroad." The Army concurred in the Navy's opposition to a tightly centralized intelligence service.

The State Department preferred an interdepartmental committee organization chaired by the Secretary of State. The Department contended that, in peacetime, the Secretary of State should supervise all operations affecting foreign relations.

The Joint Chiefs also favored coordination but opposed tight centralization. Their opposition to intelligence collection by a central agency was placed on the narrower ground that collection of intelligence should generally by carried out by existing departments except when done by clandestine methods. They also objected to Donovan's proposal that the new agency engage in foreign covert operations (such as OSS propaganda and paramilitary actions) because "subversive operation abroad does not appear to be an appropriate function of a central intelligence service." This aspect of the original Donovan plan was not, thereafter, specifically included in any proposal.

The FBI also developed its own proposal for postwar intelligence. It would have assigned responsibility for "civilian" intelligence to the FBI on a world-wide basis and left "military" intelligence to the armed services.

On January 22, 1946, in response to this policy debate, President Truman issued a directive establishing the Central Intelligence Group (CIG). The final directive was developed by the Bureau of the Budget as a compromise. The CIG was directed to coordinate existing departmental intelligence and to perform those intelligence functions which the National Intelligence Authority (NIA), a forerunner of the National Security Council, concluded should be performed centrally. The CIG supplemented but did not supplant departmental intelligence services, although the FBI did abruptly withdraw its intelligence service from Latin America.

The NIA and CIG were replaced one and one-half years later by the National Security Council and the Central Intelligence Agency. The CIA's organization and role reflected the CIG compromise between competing concepts of tight centralization and loose confederation. The CIA was only one of several agencies assigned intelligence functions.

Most of the specific assignments given the CIA, as well as the prohibitions on police or internal security functions in its statute, closely follow the original 1944 Donovan plan and the Presidential directive creating the CIG.

Chapter 5

The Sources of CIA Authority

The National Security Act of 1947 charges the CIA with the duty of coordinating the intelligence activities of the federal government and correlating, evaluating and disseminating intelligence which affects national security. In addition, the Agency is to perform such other functions and duties related to intelligence as the National Security Council may direct. The statute makes the Director of Central Intelligence responsible for protecting intelligence sources and methods.

Congress contemplated that the CIA would be involved in all aspects of foreign intelligence, including collection. It understood that the Agency would engage in some activities, including some overt collection, within the United States.[1]

The statute expressly provides that the Agency shall have no law enforcement powers or internal security functions. This prohibition is an integral part of the definition of the CIA's authority. It reflects Congress' general understanding that CIA activities in the United States would be justified only to the extent they supported the CIA's basic foreign intelligence mission.

This understanding has been reflected in the National Security Council Intelligence Directives and the other documents which further define the Agency's jurisdiction.

Determining the scope of the Agency's authority within the United States is primarily a matter of drawing the line between the responsibility of the CIA and that of the FBI, while ensuring adequate coordination to avoid gaps in coverage. The areas posing the most substantial problems in this respect have involved counterintelligence and the preservation of the security of intelligence sources and methods.

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[1] Three terms used in this report require definition:
(1) overt collection—intelligence collection activities which disclose the identity of the collecting agency to the source of the information.
(2) clandestine collection—secret collection activities where the source of the information is unaware of the identity or existence of the collector.
(3) covert activities—activities, including collection, that are secret, and deniable as having links to the United States government.

A. The Statutes

The National Security Act of 1947 replaced the National Intelligence Authority with the National Security Council, composed of the President, the Secretary of State, the Secretary of Defense, and other Secretaries and Under Secretaries when appointed by the President with the advice and consent of the Senate.[3] Subsequent legislation added the Vice President as a member. The Act also created the Central Intelligence Agency and placed it under the direction of the National Security Council.

The Agency's statutory authority is contained in Title 50 U.S.C. Sections 403 (d) and (e):

(d) For the purpose of coordinating the intelligence activities of the several government departments and agencies in the interest of national security, it shall be the duty of the [Central Intelligence] Agency, under the direction of the National Security Council—

(1) to advise the National Security Council in matters concerning such intelligence activities of the government departments and agencies as relate to national security;

(2) to make recommendations to the National Security Council for the coordination of such intelligence activities of the departments and agencies of the government as relate to the national security;

(3) to correlate and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government using where appropriate existing agencies and facilities:

Provided, That the Agency shall have no police, subpoena, law-enforcement powers, or internal security functions:

Provided further, That the departments and other agencies of the Government shall continue to collect, evaluate, correlate, and disseminate departmental intelligence:

And provided further, That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure;

(4) to perform, for the benefit of the existing intelligence agencies, such additional services of common concern as the National Security Council determines can be more efficiently accomplished centrally;

(5) to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct.

(e) To the extent recommended by the National Security Council and approved by the President, such intelligence of the departments and agencies of the Government, except as hereinafter provided, relating to the national security shall be open to the inspection of the Director of Central Intelligence, and such intelligence as relates to the national security and is possessed by such departments and other agencies of the Government, except as hereinafter provided, shall be made available to the Director of Central Intelligence for correlation, evaluation, and dissemination:

Provided, however, That upon the written request of the Director of Central

[3] Under the original statute, the Director for Mutual Security and the Chairman of the National Security Resources Board were included as members. Both these positions have since been abolished.

Intelligence, the Director of the Federal Bureau of Investigation shall make available to the Director of Central Intelligence such information for correlation, evaluation, and dissemination as may be essential to the national security.

The Director of Central Intelligence, who heads the CIA, is appointed by the President with the advice and consent of the Senate. The position of Deputy Director of Central Intelligence, added to the statute in 1953, is subject to similar appointment provisions. At no time may both positions be filled by military officers.

Other provisions of the 1947 Act give the Director of Central Intelligence complete authority over the employment of CIA personnel. He may, in his discretion, dismiss any employee whenever "he shall deem such termination necessary or advisable in the interests of the United States." His decision is not subject to judicial or Civil Service review.

In the 1949 CIA Act, Congress enacted additional provisions permitting the Agency to use confidential fiscal and administrative procedures. This Act exempts the CIA from all usual limitations on the expenditure of federal funds. It provides that CIA funds may be included in the budgets of other departments and then transferred to the Agency without regard to the restrictions placed on the initial appropriation. This Act is the statutory authority for the secrecy of the Agency's budget.

The 1949 Act also authorizes the Director to make expenditures for "objects of a confidential, extraordinary, or emergency nature" on his personal voucher and without further accounting. In order to protect intelligence sources and methods from disclosure, the 1949 Act further exempts the CIA from having to disclose its "organization, functions, names, official titles, salaries, or number of personnel employed."

B. The Legislative History

The 1947 Congressional hearings and debates reflect a dual concern. Congress accepted the need for a centralized intelligence agency that would supply the President with a complete and accurate picture of the capabilities, intentions, and activities of foreign countries. On the other hand, there was considerable congressional concern over possible misuses of this new agency. The comments of Representative Clarence Brown (Republican-Ohio) are illustrative:

I am very much interested in seeing the United States have as fine a foreign military and naval intelligence as they can possibly have, but I am not interested in setting up here in the United States any particular central policy [*sic*] agency under any President, and I do not care what his name may be, and just allow him to have a gestapo of his own if he wants to have it.

Every now and then you get a man that comes up in power and that has an imperialist idea.

The House, in the course of its deliberations, added language to the bill submitted to Congress by President Truman which detailed the specific functions given to the CIA. In doing so, it generally followed the language of the Presidential directive which had established the Central Intelligence Group, the CIA's predecessor. The inclusion in the 1947 Act of specific functions and prohibitions, therefore, was to ensure that a President could not alter the CIA's basic functions without first obtaining the approval of Congress.

1. Authority To Collect Intelligence

The statutory functions of the Agency include coordinating intelligence activities and correlating and evaluating intelligence. The statute itself does not expressly authorize the Agency to engage in intelligence collection. Congress left this matter to the National Security Council, which was authorized to direct the Agency to perform "other functions and duties related to intelligence" and "additional services of common concern," which are "for the benefit of the existing intelligence agencies."

It is clear from the legislative history that Congress expected the National Security Council to give the CIA responsibility and authority for overseas espionage. The National Intelligence Authority had given this responsibility to the predecessor Central Intelligence Group in 1946. Witnesses and congressmen were reluctant to discuss such matters publicly, but General Hoyt Vandenberg, Director of the CIG, told the Senate committee in secret session:

> If the United States is to be forced by conditions in the world today to enter clandestine operations abroad, then such operations should be centralized in one agency to avoid the mistakes indicated, and we should follow the experience of the intelligence organizations of other countries which have proven successful in this field.

Some witnesses during the congressional hearings opposed giving the CIA any responsibilities for collection of intelligence and urged that the authority of the National Security Council to assign additional functions to the CIA be deleted so that the CIA could not collect intelligence. Congress did not agree. Although two congressmen expressed disapproval of any CIA collection, the general provisions were not challenged during the floor debates. They remain in the statute as authority for the CIA to collect intelligence at the direction of the National Security Council.

2. The Meaning of "Intelligence"

The 1946 Presidential Directive expressly restricted the Central Intelligence Group to activities connected with foreign intelligence. Although the 1947 National Security Act does not contain this ex-

press restriction, there was a general understanding in and out of Congress that the CIA's activities would be similarly confined.

An exchange between General Vandenberg and Congressman Chet Holifield (Democrat-California), later the floor manager of the CIA statute, is indicative:

> GENERAL VANDENBERG. The National Intelligence Authority and the Central Intelligence Group have nothing whatsoever to do with anything domestic; so when we talk about the Central Intelligence Group or the NIA, it always means foreign intelligence, because we have nothing to do with domestic intelligence.
>
> Representative HOLIFIELD. That was my understanding, and I wanted it confirmed.

In testifying before a House committee, Navy Secretary James Forrestal said:

> The purposes of the Central Intelligence Authority [*sic*] are limited definitely to purposes outside of this country, except the collation of information gathered by other government agencies.
>
> Regarding domestic operations, the Federal Bureau of Investigation is working at all times in collaboration with General Vandenberg. He relies upon them for domestic activities.

When Representative Brown asked whether additional limitations should be attached because the CIA "might possibly affect the rights and privileges of the people of the United States," General Vandenberg responded:

> No, sir; I do not think there is anything in the bill, since it is all foreign intelligence, that can possibly affect any of the privileges of the people of the United States. . . . I can see no real reason for limiting it at this time.

The agency has never disputed that its authority is restricted to foreign intelligence.

3. *Activities Within the United States*

The fact that the CIA is restricted to activities relating to "foreign intelligence" does not, of course, tell us what those activities are and whether they may be conducted within the United States. Allen Dulles, testifying before a House committee, made the point:

> They would have to exercise certain functions in the United States. They would have their headquarters in the United States.

More importantly, an exchange between Dulles and Congressman Manasco (Democrat-Alabama) during the closed House hearings indicates that Congress understood the Agency would have authority to collect foreign intelligence in this country from knowing sources:

> Representative MANASCO. Limit it [collection] to foreign countries, of course.
>
> Mr. DULLES. There is one little problem there. It is a very important section of the thing, the point I raised there. In New York and Chicago and all through the country where we have these business organizations and philanthropic and

other organizations who send their people throughout the world. They collect a tremendous amount of information. There ought to be a way of collecting that in the United States, and I imagine that would not be excluded by any terms of your bill.

Representative MANASCO. The fear of the committee as to collecting information on our own nationals, we do not want that done, but I do not think the committee has any objection to their going to any source of information that our nationals might have on foreign operations. Is that your understanding?

Representative WADSWORTH. (Republican-New York) Yes.

Representative MANASCO. They could go to Chicago and talk to the presidents of some of the machinery firms that have offices all over the world.

Mr. DULLES. That must be done.

Less clear from the legislative history is whether Congress contemplated that the CIA would collect foreign intelligence within the United States by clandestine means, so that the source of the intelligence would be unaware that information was being provided to the CIA. As stated above, there was a general reluctance to discuss openly the subject of clandestine collection. Accordingly, the absence of discussion of the subject provides little guidance.

The 1946 Presidential directive to the predecessor CIG contained express authority only for clandestine collection "outside of the United States and its possessions," but there is no corresponding provision in the 1947 National Security Act.

Neither Dulles nor Vandenberg in their testimony (quoted in part above) referred to clandestine collection as an activity the Agency might be assigned within the United States. On the other hand, Congress failed to include this activity among the prohibitions expressly incorporated in the statute.

4. Protecting Intelligence Sources and Methods

The responsibility of the Director of Central Intelligence "for protecting intelligence sources and methods from unauthorized disclosure" reflects congressional recognition that the intelligence function necessarily involves sensitive materials and that secrecy is critical.

This language was originally inserted in the early drafts of the Act in response to the expressed concern of some military officials that a civilian agency might not properly respect the need for secrecy. Congress was also aware of the concern that United States espionage laws were ineffective in preventing unauthorized disclosure of classified information.

The statute does not provide the Director of Central Intelligence with guidance on the scope of this responsibility or on how it is to be performed; nor does it grant him additional authority to discharge this responsibility. The legislative debates did not focus on these issues.

5. Prohibition Against the Exercise of Police and Law Enforcement Powers and Internal Security Functions

The 1947 Act explicitly limits the CIA's domestic role by prohibiting the Agency from exercising law enforcement or police powers or undertaking internal security functions. This prohibition was taken almost verbatim from the 1946 Presidential directive.

Although the wording of the prohibition was not specifically discussed in congressional hearings or debates, several congressmen and witnesses expressed their concern that the CIA neither invade the FBI's jurisdiction nor become a secret police.

Dr. Vannevar Bush, the Chairman of the Joint Research and Development Board, responding to a question about the CIA's exercise of domestic police and related activities, stated:

> I think there is no danger of that. The bill provides clearly that it is not concerned with intelligence on internal affairs, and I think this is a safeguard against its becoming an empire.
>
> We already have, of course, the FBI in this country, concerned with internal matters, and the collection of intelligence in connection with law enforcement internally. We have had that for a good many years. I think there are very few citizens who believe this arrangement will get beyond control so that it will be an improper affair.

Representative Brown questioned Secretary Forrestal closely about possible domestic activities of the CIA:

> Representative BROWN. This Chief of the Central Intelligence Agency, the Director, should he decide he wants to go into my income tax records, I presume he could do so, could he not?
>
> Secretary FORRESTAL. I do not assume he could.
>
> I think he would have a very short life—I am not referring to you, Mr. Brown, but I think he would have a very short life.

General Vandenberg spoke for many when he said:

> I very strongly advocate that it [the CIA] have no police, subpoena, law enforcement powers or internal security functions.

6. "Services of Common Concern" and "Other Functions and Duties Related to Intelligence"

The statute grants broad authority to the National Security Council to assign the CIA other responsibilities in the intelligence field, subject to the prohibition on law enforcement powers or internal security functions. The preceding discussion shows that Congress specifically expected that collection of intelligence would be among those responsibilities. Other such services of common concern were mentioned by General Vandenberg before the Senate Committee on the Armed Services:

> [I]t is necessary for a central intelligence agency to perform other [functions] of common concern to two or more agencies. These are projects which it is be-

lieved can be most efficiently or economically performed centrally. An example of such a service is the monitoring of foreign voice broadcasts. . . . Similarly, we have centralized the activities of the various foreign document branches which were operated by some of the services individually or jointly during the war.

Neither the congressional hearings nor the floor debates discussed the limits on the power of the NSC to assign particular activities to the CIA as "other functions and duties related to intelligence." The broad language reflected concerns that American experience with peacetime intelligence needs and requirements was extremely limited.

Several witnesses—cabinet officers, military leaders and intelligence experts—testified before Congress that the NSC should be allowed flexibility in its direction if the CIA was to be responsive to changing conditions and if the United States was to develop an effective intelligence service.

Under the authority of this "other functions" proviso, the National Security Council has assigned the CIA responsibility for foreign covert operations of a political or paramilitary nature.

C. Practice Under the National Security Act

The National Security Council provides the CIA and other intelligence agencies with guidance and direction through National Security Council Intelligence Directives (NSCID's) and other official memoranda.

By means of these documents, the NSC exercises its statutory authority to assign the CIA services of common concern and other functions and duties related to intelligence. The NSC has also given some greater specificity to the duties of correlation, evaluation, and dissemination which are specifically assigned in the statute. Only those directives which are pertinent to the Commission's inquiry are discussed below.

Since 1947, the CIA has had, under NSC directive, the responsibility for all espionage (that is, clandestine collection of foreign intelligence) and clandestine counterintelligence activities conducted outside the United States and its possessions. In 1948, the National Security Council added the responsibility for overt collection of foreign intelligence within the United States. However, the NSC has not assigned the CIA responsibility for clandestine collection of foreign intelligence in the United States.

The CIA has a number of miscellaneous responsibilities of an intelligence-gathering nature. Perhaps the most important for purposes of this Commission is the responsibility assigned it by the NSC for dealing with persons who defect to the United States overseas. (Defections within this country are the responsibility of the FBI.) The Director of

Central Intelligence has implemented this assignment by issuing directives which set forth the details for the defector program.

Under the National Security Council directives, the Director of Central Intelligence has primary responsibility for the identification of impending crises and the transmission of relevant intelligence to the appropriate officials. The Director also has the responsibility for national intelligence—information required for the formulation of security policy which transcends the exclusive competence of any one department. The CIA is responsible for the regular production of current intelligence to meet the day-to-day needs of the President and other high-level officials. While these directives do not expressly prohibit the production of intelligence on purely domestic matters, it is clear that their focus is on overseas events.

In connection with the statutory responsibility of the Director of Central Intelligence for the protection of intelligence sources and methods from unauthorized disclosure, the National Security Council has directed that each agency or department be responsible for the protection of its own sources and methods, and that the Director call upon these other bodies as appropriate to investigate any unauthorized disclosures and report to him. The Director, has in turn, delegated these responsibilities to the Security Committee of the United States Intelligence Board, a board composed of the heads of the various intelligence agencies.

A particularly difficult security problem is presented by "leaks" of classified information to the news media. Usually there is no way of determining which agency is the source for any particular disclosure. At present all "leak" cases are referred to the Security Committee for discussion and appropriate action. The Security Committee has been given the authority to consider the problems caused by the "leak," including the degree of harm to the national interest, and to make reports and recommendations for corrective action as appropriate. The Committee, however, has no authority to direct either the FBI or any member agency to investigate "leaks."

The position of the FBI during the 1960's and early 1970's was firm: the FBI would not handle "leak" cases unless directed to do so by the Attorney General. This was a reflection of the attitude of Director J. Edgar Hoover. He felt that investigation of news "leaks" was an inappropriate use of FBI resources, because, most of the time, the source of such a "leak" could not be discovered, and often when the source was discovered, it turned out to be a high-ranking official against whom no action would be taken. As a result, the CIA, under Presidential pressure, has occasionally investigated such "leaks" itself, relying on the "sources and methods" proviso for authority.

The FBI's internal security authority and the CIA's foreign intelli-

gence responsibilities result in frequent contact, particularly in the area of counterintelligence. The FBI has responsibility for "investigative work in matters relating to espionage, sabotage, subversive activities and related matters" regarding the security of the United States. The CIA has the corresponding authority overseas. It also maintains central records and indices of foreign counterintelligence information. The NSC has assigned to the Director of Central Intelligence responsibility for establishing procedures to ensure the centralized direction and prior coordination of foreign and domestic counterintelligence activities.

Close coordination between the two agencies is required in many situations such as a visit by a foreign intelligence officer to this country to engage in espionage. The "transfer" of responsibility for counterintelligence requires constant cooperation between the CIA and FBI. Such coordination has not always existed, but the Commission was informed by representatives of both the CIA and the FBI that good relations and efficient liaison presently exist between the two agencies.

A formal memorandum between the CIA and the FBI in February 1966 provides the most detailed statement of the understanding by the two agencies of their respective authorities. For example, the FBI must be kept advised of clandestine CIA personnel in the United States. Where CIA handling of agents in this country is inadequate to protect the FBI's internal security interest, the FBI has unrestricted access to them.

The 1966 memorandum does not solve all problems. It does not outline or indicate in any specific degree the limits on CIA's activities related to foreign intelligence. No reference is made to the CIA's role within the United States to protect intelligence sources and methods, or to its power to conduct investigations for this purpose. This has been a troublesome area, as the FBI has declined to investigate the personnel of CIA or any other government agency suspected of a breach of security unless there is substantial evidence of espionage. Within the last year, work has begun to supplement and rewrite this memorandum to improve coordination and avoid future conflicts or gaps of jurisdiction.

Chapter 6
Legal Analysis

Introduction

The CIA, like every other agency of the federal government, possesses only that authority which the Constitution or duly enacted statutes confer on it. And, like every other agency, it is subject to any prohibitions or restraints which the Constitution and applicable statutes impose on it.

Congress vested broad powers in the CIA. Its purpose was to create an effective centralized foreign intelligence agency with sufficient authority and flexibility to meet new conditions as they arose.

But the Agency's authority under the Act is not unlimited. All its functions must relate in some way to foreign intelligence. The Agency is further restricted by the Act's prohibition on law enforcement powers and internal security functions, as well as by other Constitutional and statutory provisions.

Determining the lawfulness of particular Agency conduct requires analysis of its authority as well as any applicable restrictions. The process does not always produce clear and precise answers. Difficult questions of statutory and Constitutional interpretation are involved. There are few, if any, authoritative judicial decisions. The legislative history and the experience under the Act are an uncertain guide.

In many instances, the only appropriate test is one of reasonableness. Different persons are likely to hold different opinions as to what the statutes and Constitution authorize or prohibit in particular circumstances.

Legal questions are only the beginning of a complete analysis of the issues. A distinction must be drawn between what the law authorizes or prohibits and what may be desirable or undesirable as a matter of public policy. Activities which the law authorizes may, nonetheless, be undesirable as a matter of policy. Conversely, policy may create a compelling need for activities which have not been authorized; to the extent that no Constitutional restrictions pose an abso-

lute barrier, authority for such activities may be sought if it does not now exist.

In the Commission's recommendations, both law and policy are considered. This chapter, however, is intended to deal only with the applicable law.

A. The Extent of the CIA's Authority

1. The Authority of the CIA as to Foreign Intelligence

Although the National Security Act does not expressly limit the CIA's intelligence activities to foreign intelligence, it appears from the legislative history as a whole and the consistent practice under the statute that the Agency's responsibility is so limited.

In deciding what constitutes "foreign intelligence," the subject matter of the information and not the location of its source is the principal factor that determines whether it is within the purview of the CIA.[1] This conclusion is supported by that portion of the legislative history which indicates the CIA may collect foreign intelligence in this country by overt means.

"Foreign intelligence" is a term with no settled meaning. It is used but not defined in National Security Council Intelligence Directives. Its scope is unclear where information has both foreign and domestic aspects.

The legislative history indicates general congressional concern that the Agency should not direct activities against United States citizens or accumulate information on them. However, Congress did not expressly prohibit any activities by the CIA except the exercise of law enforcement and internal security functions.

We believe the congressional concern is properly accommodated by construing "foreign intelligence" as information concerning the capabilities, intentions, and activities of foreign nations, individuals or entities, wherever that information can be found. It does not include information on domestic activities of United States citizens unless there is reason to suspect they are engaged in espionage or similar illegal activities on behalf of foreign powers.

The authority of the CIA to collect foreign intelligence in this country by clandestine means is also unclear. The Act neither expressly authorizes such collection nor expressly prohibits it. The National Security Council has never formally assigned this responsibility to the CIA. The Commission concludes that the CIA's authority in this area needs clarification.

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[1] See also *Heine* v. *Raus*, 261 F. Supp. 570 (D. Md. 1966), *vacated and remanded*, 399 F. 2d 785 (4th Cir. 1968).

2. *Support Activities*

In order to carry on its authorized intelligence functions within and without the United States, the CIA must necessarily engage in a variety of support activities. Such activities include the operation of its headquarters, the recruitment and training of employees, the procurement of supplies, communication with overseas stations, and the like.

The Commission finds that the authority to conduct foreign intelligence operations includes the authority to conduct such otherwise lawful domestic activities as are reasonably necessary and appropriate by way of support. This includes the authority to use those unusual cover and support devices required by the clandestine nature of the CIA.

3. *Protection of Sources and Methods*

The National Security Act requires the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure. The Commission believes that this provision and the inherent authority of the Director authorize the Agency to take reasonable measures not otherwise prohibited to protect the facilities and personnel of the Agency from outside threats and to ensure good security practices by persons affiliated with the Agency.

What measures are reasonable in a particular case depends on all the facts and circumstances. No general rule can be laid down, but some relevant factors can be suggested. Among them are:

—The degree of danger to the security of the Agency;

—The sensitivity of the activities involved;

—The extent and nature of the Agency's intrusions on individual privacy; and,

—The alternative means of protection available.

Because of the uncertainty inherent in a test of reasonableness, the Commission in the chapters which follow has recommended both statutory changes and a number of restrictions on the means which the Agency may employ to protect its sources and methods.

On rare occasions, the Agency has asserted that the Director's authority permits him to investigate any unauthorized disclosure that jeopardizes intelligence sources and methods. This claim has been made in cases where there was no reason to believe the disclosure came from a person in any way related to the Agency. Although the statutory language and legislative history are not precise, the Commission finds that such an interpretation is unwarranted, especially in light of the applicable NSCID that makes the CIA responsible only for unauthorized disclosures from the Agency.

In our judgment:

(a) The investigative authority of the Director is limited to persons affiliated with the Agency—that is, employees (including former employees and applicants for employment), contractors and their employees, knowing sources of intelligence, agents and similar persons used by the Agency in operations, and others who require clearance by the CIA for access to classified information. Such investigations must be conducted in a lawful manner consistent with the requirements of the Constitution and applicable statutes.

(b) Investigation of breaches of security by employees of other government agencies is the responsibility of the heads of those agencies or of the FBI.

(c) The CIA has no authority to investigate newsmen.

The Commission proposes statutory changes as well as an Executive Order to clarify these matters.

4. Other Authority

The CIA derives some authority from federal statutes of general application. The Economy Act of 1932[2] authorizes government agencies to provide services and equipment to each other where that course would be in the best interest of the government. Public Law 90–331 requires all federal agencies to assist the Secret Service in the performance of its protective duties. The authority granted in these acts is often exercised by the CIA, but our investigation has disclosed no improprieties arising from that exercise.

The CIA may from time to time be delegated some of the President's inherent authority under the Constitution in matters affecting foreign relations. The scope of the President's inherent authority and the power of the Congress to control the manner of its exercise are difficult Constitutional issues not raised by the facts found by the Commission in carrying out its assignment.

B. The Restrictions on CIA's Authority

1. The Prohibition on Law Enforcement Powers or Internal Security Functions

The statutory proviso that "the Agency shall have no police, subpena, law-enforcement powers, or internal security functions" was initially designed to prevent the CIA from becoming a national secret police force. It was also intended to protect the domestic jurisdiction of the FBI. The statute does not define the terms used.

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[2] 31 U.S.C. sec. 686.

Many matters related to foreign intelligence or the security of the Agency also relate to law enforcement or internal security. For example, an unauthorized disclosure of classified information by an Agency employee may also violate the espionage acts or other criminal statutes. Additionally, the Agency in the ordinary course of its business has relationships of various types with law enforcement agencies. Some of these relationships may raise questions of compliance with the proviso.

The Commission finds that whether Agency activity is prohibited depends principally on the purpose for which it is conducted. If the principal purpose of the activity is the prosecution of crimes or protection against civil disorders or domestic insurrection, then the activity is prohibited. On the other hand, if the principal purpose relates to foreign intelligence or to protection of the security of the Agency, the activity is permissible, within limits, even though it might also be performed by a law enforcement agency.

For instance, the mere fact that the Agency has files on or containing the names of American citizens is not in itself a violation of the statutory prohibition on law enforcement or internal security functions. The test is always the purpose for which the files were accumulated and the use made of them thereafter.

The Commission does not construe the proviso to prohibit the CIA from evaluating and disseminating foreign intelligence which may be relevant and useful to law enforcement. Such a function is simply an exercise of the Agency's statutory responsibility "to correlate and evaluate intelligence relating to the national security." Nor do we believe that the CIA is barred from passing domestic information to interested agencies, including law enforcement agencies, where that information was incidentally acquired in the course of authorized foreign intelligence activities. Indeed, where the Agency has information directly relevant to an ongoing criminal investigation, as it did in connection with the Watergate investigation, the Agency is under a duty to bring its evidence to the attention of the appropriate authorities.

So long as the Agency does not actively participate in the activities of law enforcement agencies, we find that it is proper for it to furnish such agencies with the benefits of technical developments and expertise which may improve their effectiveness.

In the past, the Agency has conducted some technical training of members of state and local police forces through the Law Enforcement Assistance Administration. A 1973 statute prohibited this practice. The Agency has interpreted the statute to evidence congressional intent that it terminate furnishing such training directly to local law enforcement agencies as well. The Commission approves the Agency's

decision to leave to the FBI such training of state and local police officers.

2. Constitutional Prohibitions

The Central Intelligence Agency, like all organs of government, is required to obey the Constitution. The protections of the Constitution extend generally to all persons within the borders of the United States, even aliens who have entered the country illegally.

a. *The First Amendment.*—The First Amendment to the Constitution protects among other things freedom of speech, of the press, and of political association from abridgement by the government. These freedoms are not absolute. The Amendment, as Mr. Justice Holmes noted, does not "protect a man in falsely shouting fire in a theatre and causing a panic." Nevertheless, government conduct which inhibits the exercise of these Constitutional rights raises a substantial Constitutional question.

The interception of private communications and the undue accumulation of information on political views or activities of American citizens could have some inhibiting effect. Because the Commission has found these activities were improper for other reasons, it is unnecessary to explore the First Amendment questions in detail.

b. *The Fourth Amendment.*—The Fourth Amendment prohibits unreasonable searches and seizures. In ordinary criminal cases, law enforcement officers must obtain a judicial warrant before searching a person's residence, hotel room, or office, except in "exigent circumstances." When the Supreme Court held in 1967 that private conversations were protected by the Fourth Amendment, it made it clear that all wiretaps and other forms of surreptitious electronic surveillance were within the field of investigative activities that ordinarily require prior judicial approval.

It is unclear whether the President can act without such approval in some cases where the national security is involved. The Supreme Court recently held that a warrant is required in national security cases having "no significant connection with a foreign power, its agents or agencies." [3] However, the Court expressly reserved decision on whether a significant foreign connection would justify a different result. Some lower courts have held that no warrant is required in such cases.

Neither the Fourth Amendment nor any other Constitutional or statutory provision prohibits physical surveillance—the observation of the public comings and goings of an individual—unless such sur-

[3] *United States v. United States District Court*, 407 U.S. 297 (1972).

veillance reaches the point of harassment. The use of undercover agents or informers is also largely uncontrolled by legal standards.[4]

c. *Waiver and Consent*—Constitutional rights may be waived in certain circumstances. The Supreme Court has held that a valid waiver must be knowing and voluntary, and the evidence of such a waiver must be clear and unequivocal. The government cannot make waiver of Constitutional rights a condition of public employment, unless the demand for such a waiver is reasonably related to a proper governmental objective and the waiver is the least restrictive means available to achieve that objective. Whether a particular waiver is valid depends on all the facts of the case.

3. *Statutory Prohibitions*

a. *The Omnibus Crime Control and Safe Streets Act.*—Title III of the Omnibus Crime Control and Safe Streets Act [5] prohibits the interception of private conversations through wiretaps or other forms of electronic eavesdropping unless one party to the conversation consents or a judicial warrant is obtained. The statute expressly does not affect whatever power the President has to order warrantless wiretaps or eavesdropping in national security cases. An Executive Order, dated June 30, 1965, permits warrantless wiretaps so long as the written approval of the President or the Attorney General is obtained.

The statute defines "interception" to mean "the acquisition of the contents of any wire or oral communication through the use of any electronic, mechanical, or other device." A number of judicial decisions have held that the Act does not prohibit the collection of long-distance telephone billing records. These records show the telephone number called, the date and time of the call, and, in some cases, the names of the parties. They do not indicate the content of the call.

A different question is posed by the acquisition of communications incidental to the testing of interception equipment to be used abroad. On the face of the statute, such activities appear to be prohibited.

b. *Statutes Protecting the United States Mails.*—Opening first-class mail to examine its contents without a lawfully issued warrant is illegal.[6] The statutes set forth no exception for national security matters.

The examination of the exterior of first-class mail without opening it presents a different problem. Lower federal courts have held that these so-called "mail covers" are valid if they are conducted within the framework of the postal regulations and there is no unreasonable delay of the mail. The Supreme Court has not passed on this issue.

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[4] *Hoffa v. United States*, 385 U.S. 293 (1966).
[5] 18 U.S.C. sec. 2510 et seq.
[6] 18 U.S.C. secs. 1701–1703.

c. *Disclosure of Income Tax Information.*—Federal statutes, Executive Orders, and Internal Revenue Service regulations prohibit disclosure of information from federal income tax returns except under carefully defined procedures. There is no exception to these requirements for the CIA. Indeed, CIA inspection of tax returns was one form of improper activity specifically mentioned in the 1947 Act's legislative history.

d. *Other Statutes.*—The Commission has not attempted to identify or analyze all statutes which might conceivably apply to activities by the CIA or on its behalf. Whether in any particular case a criminal or other prohibitory statute restricts the authority of the CIA within the United States is a question of interpretation of that statute in light of the National Security Act. The statute may contain an express or implied exception for activities required in the interest of national security; on the other hand, it may be an unqualified prohibition on certain conduct. Only an analysis of the language, any relevant legislative history, and the underlying policies can answer the question in a particular case.

Conclusions

The evidence within the scope of this inquiry does not indicate that fundamental rewriting of the National Security Act is either necessary or appropriate.

The evidence does demonstrate the need for some statutory and administrative clarification of the role and function of the Agency.

Ambiguities have been partially responsible for some, though not all, of the Agency's deviations within the United States from its assigned mission. In some cases, reasonable persons will differ as to the lawfulness of the activity; in others, the absence of clear guidelines as to its authority deprived the Agency of a means of resisting pressures to engage in activities which now appear to us improper.

Greater public awareness of the limits of the CIA's domestic authority would do much to reassure the American people.

The requisite clarification can best be accomplished (a) through a specific amendment clarifying the National Security Act provision which delineates the permissible scope of CIA activities, as set forth in Recommendation 1, and (b) through issuance of an Executive Order further limiting domestic activities of the CIA, as set forth in Recommendation 2.

Recommendation (1)

Section 403 of the National Security Act of 1947 should be amended in the form set forth in Appendix VI to this Report. These amendments, in summary, would:

a. Make explicit that the CIA's activities must be related to *foreign* intelligence.

b. Clarify the responsibility of the CIA to protect intelligence sources and methods from unauthorized disclosure. (The Agency would be responsible for protecting against unauthorized disclosures within the CIA, and it would be responsible for providing guidance and technical assistance to other agency and department heads in protecting against unauthorized disclosures within their own agencies and departments.)

c. Confirm publicly the CIA's existing authority to collect foreign intelligence from willing sources within the United States, and, except as specified by the President in a published Executive Order,[7] prohibit the CIA from collection efforts within the United States directed at securing foreign intelligence from unknowing American citizens.

Recommendation (2)

The President should by Executive Order prohibit the CIA from the collection of information about the domestic activities of U.S. citizens (whether by overt or covert means), the evaluation, correlation, and dissemination of analyses or reports about such activities, and the storage of such information, with exceptions for the following categories of persons or activities:

a. Persons presently or formerly affiliated, or being considered for affiliation, with the CIA, directly or indirectly, or others who require clearance by the CIA to receive classified information;

b. Persons or activities that pose a clear threat to CIA facilities or personnel, provided that proper coordination with the FBI is accomplished;

c. Persons suspected of espionage or other illegal activities relating to foreign intelligence, provided that proper coordination with the FBI is accomplished.

d. Information which is received incidental to appropriate CIA activities may be transmitted to an agency with appropriate jurisdiction, including law enforcement agencies.

Collection of information from normal library sources such as

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[7] The Executive Order authorized by this statute should recognize that when the collection of foreign intelligence from persons who are not United States citizens results in the incidental acquisition of information from unknowing citizens, the Agency should be permitted to make appropriate use or disposition of such information. Such collection activities must be directed at foreign intelligence sources, and the involvement of American citizens must be incidental.

newspapers, books, magazines, and other such documents is not to be affected by this order.

Information currently being maintained which is inconsistent with the order should be destroyed at the conclusion of the current congressional investigations, or as soon thereafter as permitted by law.

The CIA should periodically screen its files and eliminate all material inconsistent with the order.

The order should be issued after consultation with the National Security Council, the Attorney General, and the Director of Central Intelligence. Any modification of the order would be permitted only through published amendments.

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Part III

Supervision and Control of the CIA

Introduction

The President has directed the Commission to determine whether existing safeguards are adequate to ensure that future domestic CIA activities do not exceed the Agency's authority. We have, therefore, examined CIA's external and internal controls.

Control over the CIA is exercised both within the Agency and externally by control of policy, resources and operations. First, policies are established, written into regulations and issued as guidelines. Second, resources such as money, property and personnel are allocated to activities consistent with this guidance. Third, direct supervision of CIA activities seeks to ensure that activities of the organization are consistent with policy guidance.

In this part of the report, we first examine the supervision of the CIA externally and then explain how the CIA has been controlled internally.

Chapter 7
External Controls

Because of the CIA's intelligence role and the resulting special need for secrecy, the Agency is subject to different external checks from other government agencies.

It does not fit within any regular pattern of executive supervision and control.

Its development during a period of "cold war," in which the needs for national security supported a broad construction of CIA's authority, limited control by Congress over its activities.

Until recently, there has been little public scrutiny of its activities.

Devices which have been utilized for external control of CIA are as follows:

A. Control by the Executive Branch

1. The National Security Council and Related Bodies

Primary executive control over CIA activities is exercised by the National Security Council (NSC), which by statute is responsible for supervising the CIA.

Despite its nominally supervisory position, the control exercised by the NSC relates almost entirely to basic policies and allocation of resources.

NSC determines where and how the CIA should undertake some activities and their scope. The NSC generally does not consider the desirability of specific operational methods, questions of administrative management, or whether particular projects are within the CIA's statutory authority.

The current members of the NSC are the President, Vice President, and Secretaries of State and Defense; although not members of the NSC, the Director of Central Intelligence and the Chairman of the Joint Chiefs of Staff attend all NSC meetings as observers and advisers.

The NSC establishes policy for the CIA primarily through National Security Council Intelligence Directives (NSCID's). Addressed to the entire intelligence community, they often assign responsibilities to the CIA in addition to those assigned explicitly by the 1947 National Security Act. Each is issued under authority of that Act.

In general, these directives are broad delegations of responsibility; they do not focus on particular methods for meeting the assignments. To some extent, NSCID's may also limit the activities of the CIA by assigning tasks to other agencies.

NSC authority over the CIA is also exercised through two committees: The NSC Intelligence Committee and the 40 Committee.

The NSC Intelligence Committee, created in 1971 following the recommendation of a report on the intelligence community by James R. Schlesinger (then of the Office of Management and Budget), represents the viewpoint of users of intelligence estimates and evaluations. Its members are subcabinet officials, including the President's Assistant for National Security Affairs and the Director of Central Intelligence. It meets infrequently.

The other NSC subcommittee, now named the 40 Committee,[1] reviews foreign covert operations and collection activities involving high risk and sensitivity. It has existed in some form since 1948, shortly after the NSC first authorized the CIA to engage in such activities. It is now chaired by the Assistant to the President for National Security Affairs; it includes the Chairman of the Joint Chiefs of Staff and the Director of Central Intelligence as members, and has representatives from the State and Defense Departments as well. The investigation disclosed no cases in which domestic activities—even those recognized by the Agency as highly sensitive—were submitted to the 40 Committee for approval.

In addition to the subordinate committees of the NSC, the President has, by Executive Order, established a Foreign Intelligence Advisory Board of private citizens to advise him on the objectives and management of the nation's intelligence effort and to conduct studies on specific topics of interest to him.

President Eisenhower first established the Board in 1956. President Kennedy reorganized it in 1961, and gave it the assignment of reviewing the events at the Bay of Pigs.

The Board has a staff of two but employs consultants and receives personnel on loan from intelligence agencies.

It meets for twelve days each year (two days each two months). Meetings frequently consist of briefings by intelligence services and policymakers.

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[1] So called because its charter is contained in National Security Decision Memorandum 40—it does not have 40 members.

The Advisory Board does not exert control over the CIA. In fact, the CIA is the Board's only source of information about CIA activities. It has not considered domestic intelligence activities, except that in the early 1970's it explored the relationship between the CIA and the FBI in connection with foreign intelligence activities which could successfully be accomplished within the United States.

Thus in June 1972, the Board recommended to the President that the jurisdictional lines be clarified, either legislatively or administratively, so that some government agency might undertake certain specific intelligence activities within the United States.

2. Other Intelligence Committees

As one component of the federal government's foreign intelligence services—albeit the one with the widest authority—the CIA receives at least nominal direction and control from coordinating committees established by the NSC.

The independence of these committees as a means of external control is limited, however, by the fact that they are chaired by the Director of Central Intelligence in his role as coordinator of the intelligence community.

In this supervisory role over the entire intelligence community, the Director has issued directives (DCID's) addressed to all intelligence agencies including the CIA. These are similar to their NSC counterparts (NSCID's), but are more detailed. Their primary purpose is to allocate responsibility for intelligence-related activities among the several intelligence services. For example, one DCID spells out the procedures for treatment of foreign defectors within the United States and divides responsibilities in this area between the CIA and the FBI.

In performing this oversight function, the Director is assisted by a staff of about 50 professionals assigned to him from the various intelligence agencies (including the CIA), normally headed by a flag-rank military officer. This Intelligence Community Staff provides the Director with support to coordinate the various intelligence services.

In this role, the Director is also advised by two other organizations, the Intelligence Resources Advisory Committee and the United States Intelligence Board.

The Intelligence Resources Advisory Committee, formed at the recommendation of the 1971 Schlesinger Report, advises the Director on the preparation of a consolidated intelligence program budget.

The United States Intelligence Board, in existence since 1948, is composed of the heads of the principal foreign intelligence agencies. It advises the Director on the intelligence community's operating responsibilities. These include establishing intelligence needs and

priorities, producing intelligence evaluations and estimates, and supervising the distribution of intelligence material. Of the Intelligence Board's eleven standing committees, the Security Committee has the greatest relevance to this report. It advises the Director on the protection of intelligence sources and methods from unauthorized disclosure. For example, it has proposed uniform standards of physical and personnel security and recommended investigations of some security leaks.

3. Office of Management and Budget

The Office of Management and Budget (OMB), an agency in the Executive Branch, supervises the budget of the federal government. In this connection, it controls the CIA's budget and, therefore, its resources, in much the same manner as it does for other government agencies. The CIA's proposed budget and support materials are reviewed by one budget examiner and his supervisor (who is also responsible for all other intelligence agencies) of the Office of Management and Budget.

The impact of the OMB budgetary process on some CIA activities is limited by the information supplied to OMB by the CIA. For example, the proposed budget for the divisions of the Directorate of Operations lumps all personnel costs under a "Management Support" category rather than allocating them to functional areas within each division. Yet, personnel costs represent a large percentage of the Directorate's budget. Budgets of other directorates reveal more detailed information.

OMB prepares a final CIA budget, with the President's approval, for submission to Congress. If the CIA disagrees with an OMB recommendation, it may, and frequently does, appeal to the President. In accordance with the 1949 Act, the CIA budget is not identified in the budget submitted to Congress, but is included in other appropriation accounts. Congressional oversight committees are informed which portions of the budget are intended for the CIA.

After Congress appropriates the funds, OMB transfers them to the CIA under the authority of the 1949 Act. Other transfers of funds to the CIA may take place without OMB approval under the Economy Act of 1932 (31 U.S.C. 686). Funds so transferred constitute significant portions of CIA expenditures. These funds are subject to OMB oversight, however, since it reviews them when they are first proposed for inclusion in the budget of the transferring agency.

OMB also reviews CIA requests to make expenditures from its contingency reserve fund. This fund, replenished by annual appropriations as well as unobligated funds from previous CIA appropriations, is available for unanticipated needs. Although the Director has statu-

tory authority to spend reserve funds without consulting OMB, administrative practice requires that he first obtain the approval of OMB and the chairmen of the appropriations subcommittees of the Congress.

OMB exercises control over resources allocated to the CIA. It does not control the CIA's operational activities, it is not an audit agency, and the budget process is not designed to establish intelligence policy or to perform an oversight function. OMB is generally aware of the large-scale CIA activities, but their approval or disapproval is controlled by the National Security Council and its subordinate committees.

t. The Department of Justice

The Department of Justice is charged by statute with the responsibility of investigating and prosecuting criminal cases on behalf of the United States. In so doing, it exercises the President's Constitutional responsibility to take care that the laws are faithfully executed. Criminal prosecution is the most drastic form of external control of misconduct in official positions.

In most federal agencies, a report of possible criminal conduct is investigated on a preliminary basis to determine whether there is any basis for it. If it appears to have some substance, it is referred to the Department of Justice for investigation and for a decision on whether there will be prosecution.

In 1954, the CIA pointed out to the Department of Justice that, in many cases involving CIA, prosecution would require public disclosure of sensitive Agency operations and procedures.

Even investigation and prosecutive consideration by outsiders would disseminate this information more widely than the Agency believed appropriate.

The Department of Justice responded that the Agency should investigate such allegations affecting its operations. If, after investigation, it appeared that prosecution would be precluded by the need to reveal sensitive information, then the Agency should so indicate in its reports and not refer the case to the Department of Justice.

In doing this, the Department of Justice abdicated its statutory duties and placed on the Director of Central Intelligence the responsibility for investigating criminal conduct and making the prosecutorial decision—clearly law enforcement powers. (There is, however, no evidence that these powers were ever abused by the Agency.)

This state of affairs continued until January 1975, when the Department of Justice directed that cases with a potential for criminal prosecution be referred to it for consideration.